

This Instrument Prepared By and  
After Recording Mail To:

Sedgwick Investments, LLC  
1525 W. Homer, Suite 401  
Chicago, Illinois 60642  
Attn:

*For Recorder's Use Only*

DECLARATION OF CONDOMINIUM OWNERSHIP  
AND OF  
EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS  
FOR  
1611 N HERMITAGE CONDOMINIUM  
LOCATED AT  
1611 N. HERMITAGE AVENUE  
CHICAGO, ILLINOIS

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Exhibit A — Legal Description of Condominium Property

Exhibit B — Legal Description of Commercial Property

Exhibit C — Plat

Exhibit D — Unit Ownership

Exhibit E — Non-Condominium Residential Property

DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS,  
RESTRICTIONS, COVENANTS AND BY-LAWS FOR 1611 NORTH HERMITAGE  
CONDOMINIUM LOCATED AT  
1611 N. HERMITAGE AVENUE, CHICAGO, ILLINOIS

THIS DECLARATION (this "Declaration") is made and entered into as of the \_\_\_ day of March, 2013, by Sedgwick Investments, LLC, an Illinois limited liability company ("Declarant").

RECITALS:

A. Declarant is the legal title holder of certain real estate (the "Parcel") in the City of Chicago, County of Cook, and State of Illinois, legally described on Exhibit A attached hereto;

B. Declarant desires and intends by this Declaration to submit the Property (as hereinafter defined) to the provisions of the Condominium Property Act of the State of Illinois (hereinafter sometimes referred to as the "Act"), and further desires to establish for its own benefit and that of all future owners or occupants of the Property, or any part thereof, which shall be known as the "1611 North Hermitage Condominium", certain easements and rights in, over and upon the Property and mutually beneficial restrictions and obligations with respect to the use and maintenance thereof; and

C. Declarant desires and intends that the several owners, mortgagees, occupants and other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges and restrictions (i) hereinafter set forth; and (ii) set forth in that certain Declaration of Covenants, Conditions, Restrictions, Party Walls and Easements recorded with the Office of the Recorder of Deeds of Cook County, Illinois on \_\_\_\_\_, 201\_\_, as Document No. \_\_\_\_\_ (the "Reciprocal Agreement"), all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of ownership and to facilitate the proper administration of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

NOW, THEREFORE, Declarant, as the owner of the Property, and for the purposes above set forth, declares as follows:

1. DEFINITIONS.

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1.1. Association.

The 1611 North Hermitage Condominium Association, an Illinois not-for-profit corporation.

1.2. Balconies.

Portions of the Building appurtenant to Dwelling Units, as depicted on the Plat.

1.3. Board.

The board of managers of the Association.

1.4. Building.

The building located on the Parcel, forming a part of the Property and containing the Units and the Common Elements, as shown on the Plat, and also containing the Commercial Property.

1.5. Building Hallways.

The building hallways, as depicted on the Plat, appurtenant to the Dwelling Units.

1.6. By-Laws.

Those provisions governing the administration of the Association which are set forth in Sections 5, 6 and 7 of this Declaration, as hereafter amended from time to time.

1.7. Commercial Property.

The retail portion of the Building to be located on the ground floor of the Building and legally described on Exhibit B attached hereto. The Commercial Property is located within the Project and also comprises a portion of the Property.

1.8. Common Elements.

All portions of the Property, except the Units, and including but not limited to the Building Hallways, Lobby, Parking Area, Balconies, storage lockers, garage doors and other Limited Common Elements unless otherwise specified.

1.9. Common Expenses.

The proposed or actual expenses affecting the Property, including but not limited to reserves, if any, lawfully assessed by the Board.

1.10. Declaration.

This instrument by which the Property is submitted to the provisions of the Act, and such instrument as from time to time amended.

1.11. Developer.

Sedgwick Investments, LLC, an Illinois limited liability company.

1.12. Dwelling Unit.

A part of the Building in which is constructed a Unit intended for residential living.

1.13. Garage Unit.

A part of the Property adjacent to the Parking Area upon which is constructed a private garage space intended for the parking of a single automobile.

1.14. Installment Contract.

Any contract or agreement, including contracts for deeds, bonds for deeds or any other sale or legal device, whereby a contract seller agrees to sell and a buyer agrees to buy a Unit Ownership wherein the consideration for such sale is payable in installments for a period of at least one (1) year after buyer takes possession of the Unit Ownership and the contract seller continues to have an interest, or security for the purchase price or otherwise, in such Unit Ownership.

1.15. Limited Common Elements.

A portion of the Common Elements as designated herein reserved for the use of a certain Unit or Units to the exclusion of other Units, including but not limited to the Parking Area and Balconies, as designated on the Plat.

1.16. Lobby.

The lobby, as depicted on the Plat.

1.17. Majority or Majority of the Unit Owners.

Those Owners, without regard to their number, who own more than fifty percent (50%) in the aggregate in interest of the undivided ownership interest of the Common Elements; any specified percentage of the Unit Owners means such percentage in the aggregate in interest of such undivided ownership.

1.18. Majority or Majority of the Members of the Board of Managers.

More than 50% of the total number of persons constituting the Board pursuant to the By-Laws. Any specified percentage of the members of the Board means that percentage of the total number of persons constituting the Board pursuant to the By-Laws.

1.19. Non-Condominium Residential Property.

The portion of the Parcel which may be developed as part of a second tower in Phase 2 of the Project located on south portion of the Parcel and legally described on Exhibit E attached hereto. The Non Condominium Residential Property is located within the Project but does not compromise any portion of the Property.



1.20. Occupant.

The duly authorized Person or Persons, other than an Owner, in possession of a Unit.

1.21. Owner or Unit Owner.

The person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit.

1.22. Parcel.

The entire tract of real estate described in Recital A of this Declaration and subject to the provisions of the Act.

1.23. Parking Area

A part of the Property (except the Garage Units) comprised of an exterior and interior driveways, stairs appurtenant thereto, and the mechanical, electrical, plumbing, heating and ventilating equipment and fixtures appurtenant thereto, as depicted on the Plat.

1.24. Person.

A natural individual, corporation, partnership, trustee, limited liability company or other legal entity capable of holding title to real property.

1.25. Plat.

The Plat of Survey of the Property and of all Units in the Property submitted to the provisions of the Act, which Plat is attached hereto as Exhibit C and by reference incorporated herein and made a part hereof and recorded concurrently with the recordation of this Declaration.

1.26. Project.

The Parcel and the Building.

1.27. Property.

All the land, property and space comprising the land described in Exhibit A, all improvements and structures constructed or contained therein or thereon, including part of the Building and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.

1.28. Reciprocal Agreement.

That certain Declaration of Covenants, Conditions, Restrictions, Party Walls and Easements described in Recital C of this Declaration providing for certain cross-easements,

restrictive covenants, maintenance and service obligations and cost-sharing obligations that will benefit and burden the Project.

1.29. Unit.

A part of the Property designed or intended for any type of independent use and depicted as a Unit on the Plat and being either a Dwelling Unit or a Garage Unit.

1.30. Unit Ownership.

A part of the Property consisting of one Unit and the undivided interest, as designated on Exhibit D attached hereto, of such Unit in the Common Elements appurtenant thereto.

2. UNITS: SUBMISSION TO ACT.

2.1. Submission of Property to the Act.

Declarant hereby submits the Property to the provisions of the Act. Declarant and each Person owning a Unit Ownership shall comply with the provisions of the Act as well as other laws, ordinances and other regulations applicable to condominium ownership in regard to the Property.

2.2. Units; Description and Ownership.

The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on the Plat. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number or symbol as shown on the Plat and as set forth in this Declaration, and every such description shall be deemed good and sufficient for all purposes, and shall be deemed to convey, transfer, encumber or otherwise affect the Owner's corresponding percentage of ownership in the Common Elements even though the same is not expressly mentioned or described therein. Each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes constituting the boundaries of such Unit as shown on the Plat; provided, however, that if any pipes, wires, shafts, public utility lines, chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a Unit or wholly within a Unit but serving a different Unit, any portions thereof serving only that Unit shall be deemed a part of that Unit, while any portions thereof serving more than one Unit, a Unit other than the one within which such apparatus lies or any portion of the Common Elements shall be deemed a part of the Common Elements; further provided that, to the extent that perimeter and partition walls, floors or ceilings are designated as the boundaries of the Units or of any specified Units, all decorating, wall and floor coverings, paneling, molding, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such Units, while all other portions of such walls, floors, or ceilings and all portions of windows in perimeter walls shall be deemed part of the Common Elements; further provided, that any portions of the floor or ceiling structures of a multi-level Unit serving only that Unit shall be deemed a part of that Unit. Subject to the last proviso of the foregoing sentence, all space and other fixtures and improvements within the boundaries of a Unit shall be deemed a part of that

Unit. Except as otherwise provided by the Act, no Unit Owner shall, by deed, plat or otherwise, combine, subdivide or in any other manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat. Notwithstanding the above, a Unit Owner may combine two or more Units upon approval of the Board as provided in Section 12.17.

3. COMMON ELEMENTS.

3.1. Description of Common Elements.

Except as otherwise provided in this Declaration, the Common Elements shall consist of all portions of the Property, except the individual Units. Without limiting the generality of the foregoing, the Common Elements shall include the land described on Exhibit A and, to the extent situated upon said land, the Building Hallways, Lobby, Parking Area, Balconies, storage lockers, garage doors, outside walks, trash rooms, mechanical rooms, elevators, landscaping, exterior perimeter lighting, corridors, halls, entrances and exits, roofs, mail boxes, pipes, ducts, flues, chutes, electrical wiring and conduits, central heating and cooling and plumbing facilities, public utility lines and other utility installations to the outlets, such component parts of air conditioning sleeves, floors, ceilings and perimeter walls not located within the Unit boundaries as shown on the Plat, and structural parts of the Building, including structural columns located within the boundaries of a Unit, and stairways servicing more than one Unit.

3.2. Ownership of Common Elements.

Each Unit Owner shall be entitled to and shall own an undivided interest in the Common Elements as a tenant-in-common with all other Unit Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of such Owner's Dwelling Unit as a place of residence and incident to the use and occupancy of such Owner's Garage Unit as a parking space, and such other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with his Unit. The extent or amount of such ownership shall be expressed by a percentage amount and once determined shall remain constant, and may not be changed without unanimous approval of all Unit Owners, except as otherwise provided herein. Declarant has so determined each Unit's corresponding percentage of ownership in the Common Elements as set forth in the schedule attached hereto as Exhibit D, which is incorporated herein by this reference as though fully set forth herein.

3.3. No Partition of Common Elements.

There shall be no partition of the Common Elements through judicial proceedings or otherwise until this Declaration is terminated and the Property is withdrawn from the terms of the Act or from the terms of any statute applicable to condominium ownership; provided, however, that if any Unit Ownership shall be owned by two or more co-Owners as tenants-in-common or as joint tenants or tenants by the entirety, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of said Unit Ownership as between such co-Owners.

### 3.4. Description of Limited Common Elements.

The Limited Common Elements shall consist of the Balconies, as more fully described on the Plat. Each Balcony which is a Limited Common Element is identified on the Plat by a distinguishing number or other symbol, and the Unit or Units to which each Balcony is assigned is identified on the Plat. A Unit Owner shall be entitled to exclusive use and possession of the Balcony assigned to his Unit. The Limited Common Elements shall also include the Parking Area (vs Units) and any other part of the Common Elements serving exclusively a single Unit or adjoining Units and designated on the Plat as a Limited Common Element. Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, perimeter doors, windows in perimeter walls, and any other apparatus designed to serve a single Unit shall be deemed a Limited Common Element.

### 3.5. Assignment of Limited Common Elements.

The use of any Limited Common Element other than the Parking Area may be transferred between Unit Owners at their expense, provided that the transfer may be made only in accordance with this Declaration and the Act. Each transfer shall be made by an amendment to this Declaration executed by all Unit Owners who are parties to the transfer and consented to by all of the Unit Owners who have any right to use the Limited Common Elements affected. The amendment shall contain a certificate showing that a copy of the amendment has been delivered to the Board. The amendment shall contain a statement from the parties involved in the transfer which sets forth any changes in the parties' proportionate shares. If the parties cannot agree upon a reapportionment of their respective shares, the Board shall decide such reapportionment. No transfer shall become effective until the amendment has been recorded. Rights and obligations in respect to any Limited Common Element shall not be affected, nor shall any transfer of it be effective, unless a transaction is in compliance with the requirements of this Section 3.5.

## 4. GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS.

### 4.1. No Severance of Ownership.

No Owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit Ownership without including therein his corresponding percentage of ownership in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

### 4.2. Use of the Common Elements

Subject to the limitations set forth herein, each Dwelling Unit Owner shall have the right to use the Common Elements in common with all other Dwelling Unit Owners, for the purposes of ingress to and egress from and the use, occupancy and enjoyment of the respective Unit owned by such Unit Owner, and the use and enjoyment of the Common Elements. Subject to the limitations set forth herein, each Garage Unit Owner shall have the right to use the Parking Area

in common with all other Garage Unit Owners, for the purpose of ingress to and egress from and the use, occupancy and enjoyment of the respective Garage Unit owned by such Unit Owner, and the use and enjoyment of the Parking Area. Notwithstanding anything to the contrary contained herein, a Garage Unit Owner who is not a Dwelling Unit Owner (a “Nonresident Garage Unit Owner”) shall not have the right to use those portions of the Common Areas which are exclusively for the use and enjoyment of the Dwelling Units, which shall expressly include the Building Hallways and the roof of the Building. Such rights shall extend to the Unit Owner and the members of his immediate family and guests and other authorized Occupants and visitors of the Unit Owner or Occupants. The use of the Common Elements and the rights of the Unit Owners with respect thereto shall be subject to and governed by the provisions of the Act, this Declaration and the By-Laws and rules and regulations of the Board, or the Association acting through the Board. The Board shall have the authority to lease or rent or grant licenses or concessions with respect to parts of the Common Elements (including without limitation the storage lockers and bicycle storage room, if any), subject to the provisions of this Declaration and the By-Laws and rules and regulations of the Board.

#### 4.3. Maintenance of Common Elements; Common Expenses.

Except as otherwise provided herein, the management, maintenance, repair, alteration and improvement of the Common Elements (including, without limitation, the Limited Common Elements, except to the extent provided from time to time by the Board), and the replacement and exterior cleaning of exterior glass, shall be the responsibility of the Association. Each Unit Owner shall pay his proportionate share of the Common Expenses. Each Unit Owner’s proportionate share shall be in the same ratio as his percentage of ownership in the Common Elements as set forth in Exhibit D, except that certain Common Expenses shall be assessed by the Board in the manner provided in Section 6.1. Payment thereof shall be in such amount and at such times as may be provided by the By-Laws or rules and regulations of the Board. In the event of the failure of a Unit Owner to pay such proportionate share when due, the amount thereof shall constitute a lien on the interest of such Unit Owner, as provided by the Act. Notwithstanding the foregoing, in no event shall Common Element maintenance expenses be charged until such time as the first unit closes at the Property.

#### 4.4. Easements.

(a) Encroachments. In the event that by reason of the construction, repair, reconstruction, settlement or shifting of the Building, or the design or construction of any Unit, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any other Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Elements or any other Unit, or if by reason of the design, repair, construction or reconstruction of utility systems any main pipes, ducts or conduits serving more than one Unit encroach or shall hereafter encroach upon any part of any other Unit, a valid mutual easement for the maintenance of each such encroachment is hereby established and shall exist for the benefit of such Unit and the Common Elements, as the case may be, so long as such encroachment shall exist and all or any part of the Building containing such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Unit Owner or in

favor of the Owners of the Common Elements if such encroachment occurred due to the intentional, willful or negligent conduct of said Owner or Owners or that of his agent.

(b) Easements for Utilities and Cable Television. All public utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace conduits, cables, pipes and wires and other equipment into, over, under, and along the Property, as to such of the foregoing as are existing, and on any unimproved portion of the Common Elements, as to such of the foregoing as are not existing as of the date hereof, for the purpose of providing the Property with utility services, together with the reasonable right of ingress to and egress from the Property for the said purposes. The Association may hereafter grant other or additional easements for utility purposes or for cable television purposes for the benefit of the Property into, over, under, along and on any portion of the Property, and each Unit Owner and such Unit Owner's mortgagee hereby grant to the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such Unit Owner and mortgagee, such instruments as may be necessary to effectuate the foregoing. Easements are also hereby declared and granted to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through the walls of a Unit, whether or not such walls lie in whole or in part within the Unit boundaries. A majority of more than 50% of the Unit Owners at a meeting of Unit Owners duly called for such purpose may authorize the granting of an easement for the laying of cable television cable. The grant of such easement shall be according to the terms and conditions of the local ordinance providing for cable television in the municipality. A majority of more than 50% of the Unit Owners at a meeting of Unit Owners duly called for such purpose may authorize the granting of an easement to a governmental body for construction, maintenance or repair of a project for protection against water damage or erosion.

(c) Easements to Run with Land. All easements and rights described are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Unit Owner, purchaser, mortgagee and other Person having an interest in the Property, or any part or portion thereof. Reference in any deed of conveyance or in any mortgage or trust deed or other evidence of obligation to the easements and rights described in this Section or described in any other part of this Declaration shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

#### 4.5. Parking Area.

The Board may adopt rules and regulations governing the use of the Parking Area and the Garage Units which shall be applicable to all Garage Unit Owners.

4.6. Decoration and Maintenance of Limited Common Elements.

A Unit Owner shall not paint or otherwise decorate, adorn, or change the appearance of any Limited Common Element without the consent of, or in any manner contrary to rules and regulations from time to time promulgated by, the Board. Under no circumstances shall the Balconies be used for storage purposes including storage of bicycles nor shall any satellite television antennae or dishes greater than one meter or 39.37" in diameter be installed on the Balconies or other areas of the Common Elements.

4.7. Separate Mortgages of Units.

Each Unit Owner shall have the right to mortgage or encumber his own respective Unit, together with his respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the Property or any part thereof except his own Unit and his own respective ownership in the Common Elements as aforesaid.

4.8. Separate Real Estate Taxes.

It is intended that real estate taxes are to be separately taxed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that, for any year, such taxes are not separately taxed to each Unit Owner, but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements and the Dwelling or Parking Unit's occupancy factor; and in the absence of the timely payment thereof, the same shall constitute a lien on the interest of such Unit Owner, enforceable as provided in Section 6.7 hereof.

4.9. Utilities.

Each Unit Owner shall pay for his own telephone, electricity and other utilities which are separately metered or billed to each user by the respective utility company. Utilities which are not separately metered or billed shall be treated as part of the Common Expenses. Anything herein to the contrary notwithstanding, water bills for all Units shall be treated as part of the Common Expenses.

4.10. Insurance; Unit Owners.

(a) Each Unit Owner shall be responsible for his own insurance on the contents of his own Unit, and his additions and improvements thereto and decorating and furnishings and personal property therein, and his personal property stored elsewhere on the Property, and his vehicle parked in the Garage Unit, and his personal liability, all to the extent not covered by the fire and liability insurance for all of the Unit Owners obtained as part of the Common Expenses pursuant to Section 5.7 hereof.

(b) The Board shall not be responsible for obtaining insurance on any additions, alterations or improvements made by any Unit Owner to his Unit unless and until such Unit Owner shall request the Board in writing so to do, and shall make arrangements satisfactory to the Board to reimburse the Board for any additional premiums attributable thereto; and upon the failure of such Unit Owner so to do, the Board shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements.

(c) Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, the Association, its officers, members of the Board, Declarant, the manager and managing agent of the Property, if any, and their respective employees and agents, for damage to the Common Elements, the Units, or to any personal property located in the Unit or Common Elements, caused by fire or other casualty, theft, vandalism and each and all other causes to the extent that such damage is covered by fire or other form of casualty insurance.

#### 4.11. Maintenance, Repairs and Replacements of Units.

(a) By the Board. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of (i) the Garage Units, and (ii) those portions, if any, of each Unit which contribute to the support of the Building, excluding, however, interior wall, ceiling and floor surfaces. In addition, the Association shall maintain, repair and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services and any other Common Elements which may be located within the Unit boundaries as specified in Section 2.2, exclusive of any portions of the foregoing which may be located at or beyond the wall outlets, or which may be the responsibility of an individual Owner under any other provision of this Declaration.

(b) By the Unit Owner. Except as otherwise provided in subsection (a) above, each Unit Owner shall furnish and be responsible for, at his own expense:

(i) all of the maintenance, repairs and replacements within his own Unit, and all internal installations in a Dwelling Unit such as refrigerators, ranges, microwave oven, dishwasher, garbage disposal and other kitchen appliances, washer, dryer, lighting fixtures and other electrical fixtures, heating, plumbing and air conditioning fixtures or installations and any portion of any other utility service facilities located within the Unit or Units owned by such Unit Owner; provided, however, such maintenance, repairs, and replacements as may be required to or on the Common Elements for the functioning of the plumbing within the Unit, and for the bringing of water, gas, or electricity to the Unit, shall be furnished by the Board as part of the Common Expenses. The Board or Association may provide, by its rules and regulations, for ordinary maintenance and minor repairs and replacements to be furnished to Dwelling or Garage Units by Property personnel as a Common Expense or to otherwise undertake all or any portion of such maintenance, repairs and replacements and to back-charge the Unit Owner on whose behalf the work was performed (in which event any unpaid



sum shall be a lien against such Unit and shall be deemed the nonpayment of an Association assessment); and

(ii) all of the decorating within his own Dwelling Unit from time to time, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. In order to enhance the sound conditioning of the Building, the floor covering for all occupied Dwelling Units shall meet the minimum standards as may be specified by rules and regulations of the Board. Each Unit Owner shall be entitled to the exclusive use of such portions of the perimeter walls, floors and ceilings as lie within the boundaries of his Unit as shown on the Plat, and such Unit Owner shall maintain such portions in good condition at his sole expense as may be required from time to time, which maintenance and use shall be subject to the rules and regulations of the Board. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Board and to the provisions of the Reciprocal Agreement. Decorating of the Common Elements (other than interior surfaces within the Units as above provided), and any redecorating of Units to the extent made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Elements shall be furnished as a part of the Common Expenses. Nothing herein contained shall be construed to impose a contractual liability upon the Association for maintenance, repair and replacement, and the Association's liability shall be limited to damages resulting directly from its willful neglect. The respective obligations of the Association and Unit Owners set forth in this Declaration shall not be limited, discharged or postponed by reason of the fact that any such maintenance, repair or replacement is required to cure a latent or patent defect in material or workmanship in the construction of the Building, nor because they may become entitled to the benefit of any guarantee or proceeds under policies of insurance. In addition and notwithstanding anything hereinabove to the contrary, no Unit Owner shall have a claim against the Board, Association or another Unit Owner for any work which is ordinarily the responsibility of the Board or Association but which the Unit Owner himself has performed or paid for unless the same shall have been agreed to in writing in advance by the Board.

#### 4.12. Negligence of Owner.

If, due to the willful or negligent act or omission of a Unit Owner or of a member of his family (or household pet) or of 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 at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board.

4.13. Joint Facilities.

To the extent that equipment, facilities and fixtures within any Unit or Units shall be connected to similar equipment, facilities or fixtures affecting or serving other Units or the Common Elements, then the use thereof by the individual Unit Owners shall be subject to the rules and regulations of the Board. The authorized representatives of the Association or the Board, or of the manager or managing agent for the Property, shall be entitled to reasonable access to the individual Units as may be required in connection with maintenance, repairs, or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units or the Common Elements.

4.14. Alterations, Additions and Improvements.

No alterations of any Common Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Board. In addition, no alterations, additions or improvements may be made to a Garage Unit without the prior written approval of the Board.

4.15. Liens.

Subsequent to the recording of this Declaration, no liens of any nature shall be created or arise against any portion of the Property except against an individual Unit or Units. No labor performed or materials furnished with the consent or at the request of a particular Unit Owner shall be the basis for the filing of a mechanic's lien against any other Unit. If the performance of the labor or materials is expressly authorized by the Board, each Unit Owner shall be deemed to have expressly authorized it and consented thereto, and shall be liable for the payment of his Unit's proportionate share of any due and payable indebtedness as set forth in this Section.

In the event any lien exists against two (2) or more Units and the indebtedness secured by such lien is due and payable, the Unit Owner of any such Unit so affected may remove such Unit and the undivided interest in the Common Elements appertaining thereto from such lien by payment of the proportional amount of such indebtedness attributable to such Unit. In the event such lien exists against the Units or against the Property, the amount of such proportional payment shall be computed on the basis of the percentages set forth in this Declaration. Upon payment as herein provided, it is the duty of the encumbrancer to execute and deliver to the Unit Owner a release of such Unit and the undivided interest in the Common Elements appertaining thereto from such lien, except that such proportional payment and release shall not prevent the encumbrancer from proceeding to enforce his rights against any Unit or interest with respect to which such lien has not been so paid or released.

The Owner of a Unit shall not be liable for any claims, damages or judgments entered as a result of any action or inaction of the Board other than for mechanics' liens as set forth in this Section 4.16. Each Unit Owner's liability for any judgment entered against the Board, if any, shall be limited to his proportionate share of the indebtedness as set forth in this Section 4.16, whether collection is sought through assessment or otherwise. A Unit Owner shall be liable for any claim, damage or judgment entered as a result of the use or operation of his Unit, or caused by his own conduct.

4.16. Subject to Terms of Reciprocal Agreement.

The Building contains portions thereof which are not part of the Property subject to the terms of this Declaration. To facilitate the overall operation, management, maintenance, repair and upkeep of the Building, the Building is subject to the terms and conditions of the Reciprocal Agreement. Each Owner and the Association created hereunder agree to abide by and perform in accordance with the terms of the Reciprocal Agreement. To the extent that the Reciprocal Agreement imposes any duties, responsibilities or obligations on the owner of the Property, those duties, responsibilities or obligations shall, to the extent not in conflict with the Act, be delegated to and performed by the Association.

5. ADMINISTRATION.

5.1. Board of Managers; Association.

(a) Board of Managers.

(i) The direction and administration of the Property shall be vested in a Board of Managers (hereinbefore and hereinafter sometimes referred to as the "Board"), consisting of five (5) persons who shall be elected in the manner hereinafter provided. The initial Board shall be elected at the first Annual Meeting of the Association for terms expiring on the next Annual Meeting of the Association following such election, subject to the election of a successor or successors. Thereafter each Board member shall be elected for a term of one (1) year, subject to the election of a successor or successors. No member of the Board shall be elected for a term of more than one (1) year, but Board members may succeed themselves in office.

(ii) In the event of a vacancy on the Board, the remaining members of the Board may elect by a two-thirds (2/3) vote a successor to fill such vacancy until the next annual meeting of Unit Owners or for a period terminating not later than thirty (30) days following the filing of a petition signed by Unit Owners holding twenty percent (20%) of the total votes of the Association requesting a meeting of the Unit Owners to fill such vacancy for the balance of the term. If such a petition is filed, a meeting of the Unit Owners shall be called for the purpose of filling such vacancy on the Board not later than thirty (30) days after the filing of such petition. In the event of a vacancy among the officers of the Association, the members of the Board may elect a successor to fill the vacancy for the unexpired portion of the term.

(b) Association. The Unit Owners, as described in this Declaration and in the By-Laws hereinafter mentioned, acting collectively through the Board, shall be known as The 1611 North Hermitage Condominium Association. The provisions of this Section 5 and Sections 6 and 7 below shall constitute the initial and basic By-Laws of the Association, as referred to in the Act. Subject to the right of the Developer to perform the functions of the Board prior to the election of the initial Board, each member of the Board shall be one of the Unit Owners; provided, however, that in the event a Unit

Owner is more than one natural person, only one of such persons (unless either of such persons owns portions of more than one Unit) shall be a member of the Board; provided further that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director or officer of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, or manager of such other legal entity, shall be eligible to serve as a member of the Board. All members of the Board shall be elected at large.

(c) Developer Rights. Until election of the initial Board that is comprised of a majority of Unit Owners other than the Developer, the same rights, titles, powers, privileges, trusts, duties, and obligations imposed upon the Board by the Act and in this Declaration and the By-Laws shall be held and performed by the Developer.

(d) Organization of Association. At any time following the recordation of this Declaration, the Declarant may cause the Association to be incorporated. Every Unit Owner shall, except as otherwise provided in Section 5.4(b) hereof, be a member of the Association, whether or not incorporated, which membership shall terminate upon the sale or other disposition by such member of his Unit Ownership, at which time the new Owner shall automatically become a member therein. Unless and until modified, the provisions of Sections 5, 6, and 7 hereof shall be the By-Laws of such corporation. The Developer and its appointees may be the incorporator of such corporation.

## 5.2. Determination of Board to be Binding.

Notwithstanding that the words “Board” and “Association” may in some instances be used interchangeably in various sections of this Declaration, matters of dispute or disagreement between Unit Owners or with respect to interpretation or application of the provisions of this Declaration or the By-Laws or rules or regulations promulgated by the Board shall be determined by the Board, which determination shall be final and binding on the Association and on all Unit Owners.

## 5.3. Voting Rights.

(a) There shall be one class of membership in the Association, and there shall be a total of one hundred (100) votes for all Unit Owners. Voting shall be on a percentage basis, and the percentage vote to which each Unit is entitled is the percentage interest of the undivided ownership of the Common Elements appurtenant thereto; provided, however, when thirty percent (30%) or fewer of the Units, by number, possess over fifty percent (50%) in the aggregate of the votes in the Association, any percentage vote of Unit Owners specified herein, or specified in the Act, shall require instead the specified percentage by number of Units rather than by percentage of interest in the Common Elements allocated to Units that would otherwise be applicable. The Developer may exercise the voting rights with respect to any Unit owned by Declarant.

(b) Any or all Unit Owners may be present at any meeting of the Association and may vote or take any other action, either in person or by proxy executed in writing by the Unit Owner or by his duly authorized attorney in fact. Any proxy distributed for

Board elections by the Board shall give Unit Owners the opportunity to designate any person as the proxy holder, and shall give the Unit Owner the opportunity to express a preference for any of the known candidates for the Board or to write in a name. Every proxy must bear the date of execution thereof. A proxy shall be invalid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

(c) Where there is more than one Owner of a Unit, and if only one of the multiple Owners of a Unit is present at a meeting of the Association, such Owner shall be entitled to cast all the votes allocated to that Unit. If more than one of the multiple Owners of a Unit are present at a meeting of the Association, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners, which majority agreement shall be deemed to have been reached if any one of the multiple Owners of a Unit casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit.

(d) The Association may, upon adoption of the appropriate rules by the Board, conduct elections by secret ballot whereby the voting ballot is marked only with the percentage interest for the Unit and the vote itself, provided that the Board further adopts rules to verify the status of the Unit Owner issuing a proxy or casting a ballot; and further, that a candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of ballots at such election.

#### 5.4. Meetings.

(a) Quorum; Procedure. Unless the Unit Owners holding a majority of the percentage interest in the Association provide for a higher percentage, the presence at any meeting of the Unit Owners having twenty percent (20%) of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Association at which a quorum is present upon the affirmative vote of the Unit Owners having a majority of the total votes present and voting at such meeting. Any Owner in writing may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Association without a meeting.

(b) Annual Meeting. The election of the first Unit Owner Board shall be held not later than sixty (60) days after the conveyance by the Developer of seventy-five percent (75%) of the Units or a date three years after this Declaration is recorded, whichever shall first occur, or such sooner time as may be designated by Declarant. The Developer shall give at least twenty-one (21) days notice of such meeting to elect the first Unit Owner Board. Declarant shall provide to a Unit Owner, within three (3) working days after a request by such Unit Owner, the names, addresses, and weighted vote of each Unit Owner entitled to vote at the first Annual Meeting of the Association. Thereafter, there shall be an Annual Meeting of the Association on the second Tuesday of September of each succeeding year, at 7:30 o'clock p.m., on the Property, or at such other reasonable place or time (not more than thirty (30) days before or after such date), as may be designated by written notice of the Board mailed or delivered giving the Owners no

less than ten (10) and no more than thirty (30) days notice of the time, place and purpose of such meeting. At each Annual Meeting, the Unit Owners shall elect members of the Board to succeed those members whose terms shall have expired. The Board may disseminate to Unit Owners biographical and background information about candidates for election to the Board if (x) reasonable efforts to identify all candidates for election to the Board are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated, and (y) the Board does not express a preference in favor of any candidate. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of ballots at such election. Subsequent to the first Annual Meeting, the Board, within ten (10) days after receipt of the request by a Unit Owner, shall provide such Unit Owner with the names, addresses, and weighted vote of each Unit Owner entitled to vote at a meeting to elect members of the Board. In the event the Developer does not call a meeting for the purpose of election of the Board within the time provided in this subsection (b), Unit Owners holding twenty percent (20%) of the interest in the Association may call a meeting by filing a petition for such meeting with the Developer, after which such Unit Owners shall have authority to send notice of said meeting to the Unit Owners and to hold such meeting. If the first Board is not elected at the time so established, the Developer shall continue in office for a period of thirty (30) days whereupon written notice of his resignation shall be sent to all of the Unit Owners entitled to vote at such election. In the event of a resale of a Unit Ownership from a seller (other than Declarant) pursuant to an Installment Contract for purchase, the purchaser under said Installment Contract shall, during such times as he or she resides in the Unit and unless the seller expressly retains in writing any or all of such rights, (i) be counted toward a quorum for purposes of election of the Board at any meeting of the Unit Owners called for such purposes, and (ii) have the right to vote for the election of the Board and to be elected to and serve on the Board. In no event may the seller and purchaser pursuant to an Installment Contract both be counted toward a quorum, be permitted to vote for a particular office or be elected and serve on the Board. Satisfactory evidence of the Installment Contract shall be made available to the Association or its agents.

(c) Special Meetings. Special meetings of the Association may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the Unit Owners, or for any other reasonable purpose. Said meetings may be called by the President of the Association, a majority of the Board, or by not less than twenty percent (20%) of the Unit Owners, upon notice of not less than ten (10) nor more than thirty (30) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

(d) Service of Notices. Notices of meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Unit of the Owner with respect to which such voting right

appertains if no address has been given to the Board. Notices shall be effective upon mailing.

(e) Special Matters. Approval of any of the following matters shall require the affirmative vote of two-thirds (2/3) of the Unit Owners: (i) the merger or consolidation of the Association; (ii) the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the assets of the Association; and (iii) the purchase, sale or leasing of land or Units on behalf of all of the Unit Owners.

(f) Meetings Regarding the Budget. (i) Each Unit Owner shall receive notice, in the same manner as is provided in the Act and this Declaration for membership meetings, of any meeting of the Board concerning the adoption of the proposed annual budget and regular assessments pursuant thereto or to adopt a separate (special) assessment. (ii) If an adopted annual budget or any separate assessment adopted by the Board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding one hundred fifteen percent (115%) of the sum of all regular and separate assessments payable during the preceding fiscal year, the Board, upon written petition by Unit Owners with twenty percent (20%) of the votes of the Association delivered to the Board within fourteen (14) days of the Board action, shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition to consider the budget or separate assessment; unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the budget or special assessment, such budget shall be deemed ratified whether or not a quorum is present at such meeting. In determining whether assessments exceed one hundred fifteen percent (115%) of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the condominium property, and anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, shall be excluded from the computation.

#### 5.5. Meetings of the Board.

A majority of the members of the Board shall constitute a quorum. Members of the Board shall serve for the term specified in Section 5.1 hereof or until their successors are elected. Except as otherwise provided in this Declaration, the Property shall be managed by the Board, and the Board shall act by majority vote of those present and voting at its meetings when a quorum exists. Meetings of the Board may be conducted in accordance with such regulations as the Board may adopt, subject to the following:

(a) Meeting Notices and Conditions. Meetings of the Board shall be held upon not less than seventy-two (72) hours notice given to the Unit Owners and to the members of the Board by mail, telegram or personal service, provided that persons entitled to such notice not receiving timely or proper notice may waive such notice in writing before the meeting is convened. The Board shall meet at least four (4) times annually. Meetings of the Board shall be open to all Unit Owners who desire to attend, except for the portion of any meeting held (i) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent, (ii) to

consider information regarding appointment, employment or dismissal of an employee, or (iii) to discuss violations of rules and regulations of the Association or a Unit Owner's unpaid share of Common Expenses; provided that any vote on these matters shall be taken at a meeting or portion thereof open to any Unit Owner. Any Unit Owner may record the proceedings at meetings or portions thereof required to be open to Unit Owners by tape, film or other means, provided that the Board may prescribe reasonable rules and regulations to govern the right to make such recordings. Copies of the notices of meetings of the Board shall be posted in entranceways or other conspicuous places in the Common Elements at least forty-eight (48) hours prior to the meeting of the Board; except where there is no common entranceway for seven (7) or more Units, the Board may designate one or more locations in the proximity of these Units where the notices of meetings shall be posted. The Board shall not adopt or approve a proposed annual budget or special assessment at any meeting unless a copy of the proposed annual budget, together with an indication of which portions are intended for capital expenditures or repairs or payment of real estate taxes, has been delivered or sent to each Unit Owner not later than thirty (30) days prior to the meeting at which the annual budget is adopted or approved and a notice of such meeting or any meeting at which a special assessment may be adopted has been sent to the persons and in the form and within the time required for meetings of the Association. Special meetings of the Board may be called by the President of the Association or 25% of the members of the Board.

(b) Annual Meeting. An annual meeting of the Board shall be held immediately following the annual meeting of the Association and at the same place. At such annual meeting, the Board shall elect the officers of the Association, and may conduct such other business as may properly be submitted to the Board.

(c) Officers. The Board shall elect from among its members a President who shall preside over both its meetings and those of the Unit Owners, a Secretary who shall keep the minutes of all meetings of the Board and of the Unit Owners and who shall, in general, perform all the duties incident to the office of Secretary, and a Treasurer who shall keep the financial records and books of account. The office of Secretary and Treasurer may be held by the same person. The Board may by resolution: create additional offices and elect appointees thereto; create committees and make appointments thereto; and fill any mid-term vacancy in any such office pending the next annual meeting. The term of any officer shall be one year subject to the election of a successor or successors. Officers are permitted to succeed themselves. An officer may resign his office but retain his status as a member of the Board.

(d) Removal and Resignation. A Board member may be removed from office with cause at any meeting of the Board by the affirmative vote of a majority of the members of the Board, and any vacancy in any office may be filled by the Board at any meeting thereof. A Board member may resign upon thirty (30) days prior written notice to the Board.

(e) Compensation. Board Members shall receive no compensation for their services.



(f) Notices and Documents. The President or any other authorized officer of the Association shall be authorized to mail and receive notices on behalf of the Association and shall have the power to execute all condominium instruments, including amendments of this Declaration, on behalf of the Association, and to execute and cause to be transmitted all notices to Unit Owners.

5.6. General Powers of the Board.

The Board shall exercise for the Association all powers, duties, and authority vested in the Association by law or this Declaration, except for such powers, duties and authority reserved by law to the members of the Association. Without limiting the general powers which may be provided by law, this Declaration and the Act, the Board shall have the following general powers and duties:

- (a) To elect the officers of the Association as hereinabove provided;
- (b) To administer the affairs of the Association and the Property;
- (c) To engage the services of a manager or managing agent who shall manage and operate the Property and the Common Elements thereof for all of the Unit Owners, upon such terms and for such compensation and with such authority as the Board may approve;
- (d) To formulate policies for the administration, management and operation of the Property and the Common Elements thereof, and to provide for the implementation thereof;
- (e) To adopt and amend rules and regulations covering the details of the administration, management, operation and use of the Property and the Common Elements, provided no such rules or regulations shall be adopted or amended until after a meeting (at which a quorum shall not be required) of the Unit Owners called for the specific purpose of discussing the proposed rules and regulations, notice of which meeting shall contain the full text of the proposed rules and regulations, which notice shall be in the form, and be sent to the persons within the time period, required for meetings of the Association; further provided that no rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Section I of the Illinois Constitution, nor may any rules or regulations conflict with the provisions of the Act or this Declaration; and to impose such restrictions on and requirements respecting the use and maintenance of the Units and the use of the Common Elements, not set forth in this Declaration, as are designed to prevent unreasonable interference with the use of their respective Units and of the Common Elements by the several Units Owners;
- (f) To provide for the operation, care, upkeep, maintenance, repair, replacement, and improvement of the Common Elements and payments therefor, and to approve payment vouchers or to delegate such approval to the officers or the manager or managing agent. Replacement of the Common Elements may result in an improvement

over the quality of such elements or facilities; provided that, if the improvement results in a proposed expenditure exceeding five percent (5%) of the annual budget, the Board, upon written petition by Unit Owners with twenty percent (20%) of the votes of the Association delivered to the Board within fourteen (14) days of the Board action to approve the expenditure, shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition to consider the expenditure. Unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the expenditure, it is ratified;

(g) To provide for the designation, employment and dismissal of employees and other personnel, including accountants, and to engage or contract for the services of others, and to make purchases necessary and advisable for the maintenance, repair, replacement, administration, management and operation of the Property and the Common Elements, and to delegate any such powers to the manager or managing agent (and any such employees or other personnel who may be the employees of the managing agent);

(h) To estimate the amount of and prepare, adopt and distribute the annual budget, and to provide the manner of assessing and collecting from the Unit Owners their respective shares of such estimated expenses and to levy and expend assessments;

(i) To comply with the instruction of not less than two-thirds (2/3) of the Unit Owners (unless a different plurality is required with respect to any issue or matter as elsewhere herein specified), as expressed in a resolution duly adopted at any annual or special meeting of the Unit Owners;

(j) To own, convey, encumber, lease, sell, mortgage, and otherwise deal with Units conveyed to or purchased by it including but not limited to Garage Units controlled by the Association or Board; to lease, assign, deal with or grant licenses with respect to the Parking Area and other areas controlled by the Association or the Board; and to designate areas of the Common Elements to be utilized for specific purposes;

(k) To seek relief on behalf of and at the expense of all Unit Owners, upon authorization by a two-thirds (2/3) vote of the members of the Board or a Majority of the Unit Owners at a meeting duly called for such purpose, from or in connection with the assessment or levy of real estate taxes, special assessments and any other special taxes, levies, assessments or charges of the State of Illinois or of any political subdivision thereof or of any lawful taxing or assessing body, and to charge and collect all expenses incurred in connection therewith as Common Expenses;

(l) To exercise all other powers and duties of the Board or Unit Owners as a group referred to in the Act, and all powers and duties of the Board referred to in this Declaration or the By-Laws, and to perform all acts necessary to implement the foregoing;

(m) To adopt further rules of procedure for the administration of the Board and the Association, provided that the powers of the Board shall at all times be subject to the

provisions of this Declaration, as now existing or as hereafter amended pursuant to the provisions of Section 12.8;

(n) To establish and maintain demand deposit accounts or savings accounts at federally insured banks or savings and loan associations;

(o) To retain legal counsel, accountants and other professionals as may be required for general purposes relating to the Building and for consultation and representation as to real estate tax matters;

(p) To impose charges for late payments of a Unit Owner's proportionate share of the Common Expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of this Declaration, the By-Laws and rules and regulations of the Association;

(q) To assign the right of the Association to future income from Common Expenses or other sources, and to mortgage or pledge substantially all of the remaining assets of the Association;

(r) To pay real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political division thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the Property;

(s) To obtain adequate and appropriate kinds of insurance;

(t) To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property;

(u) To have access to each Unit from time to time as may be necessary for the maintenance, repair or replacement of any Common Elements or for making emergency repairs necessary to prevent damage to the Common Elements or to other Units;

(v) To elect to dedicate a portion of the Common Elements to a public body for use as, or in connection with, a street or utility where authorized by a 2/3 Majority of the Unit Owners at a meeting duly called for such purpose;

(w) To record the granting of an easement for the laying of cable television cable where authorized by the Unit Owners under the provisions of Section 4.4(b);

(x) To reasonably accommodate the needs of a handicapped Unit Owner as required by the federal Civil Rights Act of 1968, as amended, the Human Rights Act, 775 ILCS 5/1-101 et seq., and any applicable local ordinances in the exercise of its powers with respect to the use of Common Elements or approval of modification in an individual Unit; and

(y) To establish and maintain a system of master metering of public utility services and collect payments in connection therewith, subject to the requirements of the Tenant Utility Payment Disclosure Act.

In the performance of their duties, the officers and members of the Board, whether appointed by the Developer or elected by the Unit Owners, shall exercise the care required of a fiduciary of the Unit Owners.

The collection of assessments from Unit Owners by the Association, the Board or their duly authorized agents shall not be considered acts constituting a collection agency for purposes of the Collection Agency Act, 225 ILCS 425/1 et seq.

5.7. Specific Powers of the Board.

The Board, for the benefit of the Board, the Association and all Unit Owners, shall acquire, and shall pay out of the maintenance fund hereinafter provided for, such amounts as shall be necessary for the following:

(a) Utility Service for Common Elements. Water, scavenger, waste removal, electricity, gas, telephone, heat, power, and other necessary utility service for the Common Elements and water for the Units;

(b) Property Insurance.

(i) Property insurance (A) on the Common Elements and the Units, including the Limited Common Elements and except as otherwise determined by the Board, the bare walls, floors, and ceilings of the Units, (B) providing coverage for special form causes of loss, and (C) in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. Premiums for such insurance shall be Common Expenses. The Board may, in the case of a claim for damage to a Unit or the Common Elements, (X) pay the deductible amount as a common expense, (Y) after notice and an opportunity for a hearing, assess the deductible amount against the Owners who caused the damage or from whose Units the damage or cause of loss originated, or (Z) require the Unit Owners of the Units affected to pay the deductible amount.

(ii) The insurance maintained under this Section 5.7(b) must include the Units, the Limited Common Elements except as otherwise determined by the Board, and the Common Elements. The insurance need not cover improvements and betterments to the units installed by Unit Owners, but if improvements and betterments are covered, any increased cost may be assessed by the Association against the Units affected. For the purposes of this Section 5.7(b)(ii), "Common Elements" include fixtures located within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual Units initially installed by Developer, and exclude floor, wall, and ceiling coverings. "Improvements and

betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by Unit Owners.

(iii) Any loss covered by the insurance required by this Section 5.7(b) must be adjusted by and with the Association. The insurance proceeds for that loss must be payable to the Association, or to an insurance trustee designated by the Association for that purpose. The insurance trustee or the Association must hold any insurance proceeds in trust for Unit Owners and secured parties (including without limitation First Mortgagees) as their interests may appear. The proceeds must be disbursed for the repair or restoration of the damaged Common Elements, the bare walls, ceilings and floors of the Units, and then to any improvements and betterments the Association may insure. Unit Owners are not entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the Common Elements and Units have been completely repaired or restored or the Association has been terminated as trustee;

(c) Liability Insurance. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Property in a minimum amount of One Million Dollars (\$1,000,000) for any one person injured, One Million Dollars (\$1,000,000) for any one occurrence and One Million Dollars (\$1,000,000) for property damage, or a greater amount deemed sufficient in the judgment of the Board, and other liability and boiler insurance as it may deem desirable, insuring the Board, the Association, the management agent, and their respective employees and agents and all persons acting as agents. Developer must be included as an additional insured in its capacity as a Unit Owner, manager, Board member or officer. The Unit Owners must be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance must cover claims of one or more insured parties against other insured parties. Premiums for such insurance shall be Common Expenses;

(d) Worker's Compensation. Worker's Compensation insurance to the extent necessary to comply with any applicable laws;

(e) Fidelity bond; directors and officers coverage.

(i) A fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the Association, for the maximum amount of coverage available to protect funds in the custody or control of the Association, plus the Association reserve fund.

(ii) All management companies that are responsible for the funds held or administered by the Association must be covered by a fidelity bond for the maximum amount of coverage available to protect those funds. The Association

has standing to make a loss claim against the bond of the managing agent as a party covered under the bond.

(iii) For purposes of Sections 5.7(e)(i) and (ii), the fidelity bond must be in the full amount of Association funds and reserves in the custody of the association or the management company.

(iv) The Board must obtain directors and officers liability coverage at a level deemed reasonable by the Board. Directors and officers liability coverage must extend to all contracts and other actions taken by the Board in their official capacity as members of the Board and officers, but this coverage shall exclude actions for which the members of the Board are not entitled to indemnification under the General Not For Profit Corporation Act of 1986 or under this Declaration;

(f) Other Insurance. Any other insurance, including without limitation employment practices insurance, environmental hazards insurance, and equipment breakdown insurance, the Board considers appropriate to protect the Association, the Unit Owners, or members of the Board, officers, or agents of the Association;

(g) Wages and Fees for Services. The services of any person or firm employed by the Board, including, without limitation, the services of any person or firm employed to act as manager or as managing agent for the Property, the services of any person or persons required for maintenance or operation of the Property, and legal, accounting and other professional services necessary or proper in the operation of the Property or the enforcement of this Declaration and for the organization, operation and enforcement of the rights of the Association;

(h) Care of Garage Units and Common Elements. All sums payable for maintenance, painting, cleaning, decorating, repair and replacement of the Garage Units and the Common Elements (but not including the interior surfaces of the Units, which the Owner shall paint, clean, decorate, maintain and repair subject to the provisions of subsection 5.7(i), and not including any portion of the Common Elements or Limited Common Elements which is the responsibility of any Owner or Owners) and such additional amenities, furnishings, equipment and services for the Common Elements as the Board shall determine are necessary or proper, and the Board shall have the exclusive right and duty to acquire the same as part of the Common Elements;

(i) Additional Expenses. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, assessments, taxes or other charges which the Board is required to secure or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the maintenance and operation of the Property as a first class building or for the enforcement of this Declaration;

(j) Discharge of Mechanics' Liens. Any amount necessary to discharge any mechanics' lien or other encumbrance levied against the entire Property or any part

thereof which may in the opinion of the Board constitute a valid and enforceable lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Owners; it being understood, however, that the foregoing authority shall not be in limitation of any statutory provisions relating to the same subject matter. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said Owner or Owners;

(k) Certain Maintenance of Dwelling Units and Garage Units. Maintenance and repair of any Dwelling Unit or any Garage Unit, as provided in this Declaration, and maintenance and repair of any Dwelling Unit, if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements, or any portion of the Building or the upkeep and appearance of the Property, and the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said Owner or Owners; provided that the Board shall levy a special assessment against such Unit Owner or Owners for the cost of said maintenance or repair. The Board or its agents or contractors may enter any Unit when necessary in connection with any such maintenance and any other maintenance or construction for which the Association is responsible, or for general exterminating services for the Building ordered by the Board. It may likewise enter any Limited Common Element, including but not limited to the Parking Area or any stairway, Lobby, or Balcony, for maintenance, repair, construction or painting. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damages caused thereby shall be repaired by the Board and the cost thereof shall be a Common Expense. The Board reserves the right to retain a passkey to each Unit, and no locks or other devices shall be placed on the doors to the Units to obstruct entry through the use of such passkey. In the event of any emergency originating in or threatening any Unit, or in the event of the Owner's absence from the Unit at a time when required alterations or repairs are scheduled, the management agent or his representative or any other person designated by the Board may enter the Unit or Limited Common Element immediately, whether the Owner is present or not, and may make emergency repairs or take emergency measures to prevent damage to the Unit or any other Unit or the Common Elements;

(l) Capital Additions and Improvements. The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any capital additions and improvements or structural alterations (other than for purposes of replacing or restoring portions of the Common Elements) having a total cost per addition, improvement or alteration in excess of Five Thousand Dollars (\$5,000), without the prior approval of two-thirds (2/3) of the Unit Owners (except in the case of additions, improvements or alterations to the Limited Common Elements which shall require the prior approval of two-thirds of only those Unit Owners obligated to pay for the cost thereof as provided in Sections 5.7(i), 6.7(a), or 12.1);

(m) Certain Utility Services to Units. The Board may pay from the maintenance fund all charges for water taxes, scavenger, waste removal and/or any utilities which are not separately metered or otherwise directly charged to individual Owners and for all water charges for Units. However, the Board may discontinue such payments at any time, in which case each Owner shall be responsible for direct payment of his share of such expenses as determined by the Board;

(n) User Charges. The Board, at its option, at any time and from time to time, may establish, and each Owner shall thereafter pay, user charges to defray the expense of providing services, facilities or benefits which may not be used equally or proportionately by all of the Owners or which, in the judgment of the Board, should not be charged to every Owner. Such expenses may include, without limitation, fees for such services and facilities provided to Owners which should not be reasonably allocated among all of the Owners in the same manner as the Common Expenses. Such user charges may be billed separately to each Owner benefited thereby, or may be added to such Owner's share of the Common Expenses, as otherwise determined, and collected as a part thereof. Nothing herein shall require the establishment of user charges pursuant to this Section, and the Board may elect to treat all or any portion thereof as Common Expenses; and

(o) Reciprocal Agreement. Any amount necessary to pay and satisfy the obligations of the Association in accordance with the terms of the Reciprocal Agreement.

#### 5.8. Vouchers.

All vouchers for payment of expenditures by the Board shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such vouchers shall be signed by the Treasurer and countersigned by the President of the Association.

#### 5.9. Rules and Regulations; Management.

(a) Rules. Written notice of all rules and regulations and amendments thereto shall be given to all Owners, and the entire Property shall at all times be maintained subject to such rules and regulations.

(b) No Business Activity by the Board. Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Unit Owners or any of them, except that net income from concessions on the Property and from the sale or net rental of Units controlled by the Board shall be utilized for the general benefit of all Unit Owners.

#### 5.10. Indemnification.

(a) The Association shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated



action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that he is or was a member of the Board, officer, employee or agent of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Association shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a member of the Board, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another association, corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association; and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for willful misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that contractual liability insurance or other insurance shall exist therefor, or to the extent that a member of the Board, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) hereof, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) hereof (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the member of the Board, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b) hereof. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of members of the Board who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable (or, even if obtainable, upon the direction of a quorum of disinterested

members of the Board) by independent legal counsel in a written opinion or (iii) by a Majority of the Unit Owners.

(e) The indemnification provided in this Section 5.10 shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any contract, agreement, vote of Unit Owners or disinterested members of the Board or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a member of the Board, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

(f) The Association shall have power to purchase and maintain as a Common Expense insurance on behalf of any person who is a member of the Board, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another association, corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Section 5.10.

#### 5.11. Board Disputes.

(a) For purposes hereof, a “Board Deadlock” shall mean (i) a failure to obtain a majority vote of Board members present and voting at a meeting when a quorum exists in favor of or against a resolution which a Board member has proposed for action by the Board or with respect to which the Board is required by this Declaration to take action, or (ii) a failure to obtain a quorum of Board members at three consecutive duly called meetings of the Board.

(b) In the event of a Board Deadlock, such Board Deadlock shall be resolved by arbitration in Chicago, Illinois, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”). Any member of the Board may initiate such arbitration by sending a notice in writing to the AAA and to the other members of the Board (x) stating that there is a Board Deadlock, (y) stating the matters with respect to which the Board has failed to reach agreement or, if the Board Deadlock arises by reason of a failure of the Board to meet, the matters with respect to which action is desired (the “Controversial Board Items”), and (z) requesting that the Controversial Board Items be settled in accordance with the rules of the AAA. The decision with respect to the Controversial Board Items of the arbitrator appointed by the AAA shall be final and binding upon the members of the Board and shall be deemed to be a duly authorized action of the Board.

(c) All costs of arbitration pursuant to this Section 5.11 shall be paid by the Association.

5.12. Owners' Disputes.

(a) For purposes hereof, an "Owners' Deadlock" shall mean (i) a failure to obtain a majority vote of Unit Owners present and voting at a meeting of Unit Owners when a quorum exists in favor of or against a resolution which requires only a majority vote of the Unit Owners, or (ii) a failure to obtain a quorum of Unit Owners at three consecutive duly called meetings of the Association. This Section 5.12 shall not apply to the failure to obtain more than a majority vote of Unit Owners with respect to a particular matter which, under the terms of this Declaration or by law, requires greater than a majority vote of Unit Owners for approval thereof.

(b) In the event of an Owners' Deadlock, such Owners' Deadlock shall be resolved by arbitration in Chicago, Illinois, in accordance with the Commercial Arbitration Rules of the AAA. Any Owner may initiate such arbitration by sending a notice in writing to the AAA and to the other Owners (other than a Co-Owner of the initiating Owner's Unit Ownership) (x) stating that there is an Owners' Deadlock, (y) stating the matters with respect to which the Association failed to reach agreement or, if the Owners' Deadlock arises by reason of a failure of the Association to meet, the matters (other than those which require more than a majority vote of Unit Owners for approval thereof) with respect to which action is desired (the "Controversial Association Items"), and (z) requesting that the Controversial Association Items be settled in accordance with the rules of the AAA. The decision with respect to the Controversial Association Items of the arbitrator appointed by the AAA shall be final and binding upon the Owners and shall be deemed to be a duly authorized action of the Owners.

(c) All costs of arbitration pursuant to this Section 5.12 shall be paid by the Association.

5.13. Records of the Association.

(a) The Board shall maintain the following records of the Association available for examination and copying at convenient hours of weekdays by the Unit Owners or their mortgagees and their duly authorized agents or attorneys.

(i) Copies of the recorded Declaration, By-Laws, other condominium instruments and any amendments, Sections of Incorporation of the Association, annual reports and any rules and regulations adopted by the Association or its Board shall be available.

(ii) Detailed accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the Association shall be maintained.

(iii) The minutes of all meetings of the Association and the Board shall be maintained. The Association shall maintain these minutes for a period of not less than 7 years.

(iv) Ballots and proxies related thereto for all elections to the Board and for any other matters voted on by the Unit Owners shall be maintained for a period of not less than 1 year; provided that if the Association adopts the secret ballot election process under Section 5.3(d) unless directed by court order, only the voting ballot excluding a Unit number shall be subject to inspection and copying.

(v) Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to Section 107.75 of the Illinois General Not For Profit Corporation Act of 1986 shall be maintained.

(vi) With respect to Units owned by a land trust if a trustee designates, in writing, a person to cast votes on behalf of the Unit Owner, that designation shall remain in effect until a subsequent document is filed with the Association.

(b) Where a request for records under this Section 5.13 is made in writing to the Board or its agent, failure to provide the requested record or to respond within 30 days shall be deemed a denial by the Board.

(c) A reasonable fee may be charged by the Association or its Board for the actual cost of copying.

#### 5.14. Contracts.

The Board may not enter into a contract with a current Board member or with a corporation or partnership in which a Board member or a member of the Board member's immediate family has 25% or more interest, unless notice of intent to enter the contract is given to Unit Owners within twenty (20) days after a decision is made to enter into the contract and the Units Owners are afforded an opportunity by filing a petition, signed by 20% of the Unit Owners, for an election to approve or disapprove the contract; such petition shall be filed within twenty (20) days after such notice and such election shall be held within thirty (30) days after filing the petition; for purposes of this Section 5.14, a Board member's immediate family means the Board member's spouse, parents and children.

### 6. ASSESSMENTS - MAINTENANCE FUND.

#### 6.1. Preparation of Estimated Budget.

Each year, on or before November 1, the Board will estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the operation and maintenance of the Common Elements and other expenses of the Association, together with a reasonable amount considered by the

Board to be necessary for a reserve for contingencies and replacements (the “estimated cash requirement”), and shall prepare and distribute to all Unit Owners at least 30 days prior to the adoption thereof by the Board, a detailed proposed annual budget, setting forth with particularity all anticipated common expenses by category as well as all anticipated assessments and other income, with an indication of which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes. Prior to the election of the first Board, the budget shall (i) be prepared by the Developer, in its sole and absolute discretion, (ii) be based upon the Developer’s best estimate of the total amount of funds so required (which estimate may take into account reduced costs of operation and maintenance of the Common Elements and other expenses of the Association based on the state of completion of the Project and the number of occupied Dwelling Units), and (iii) not be required to contain a reserve for contingencies and replacements. No assessments shall accrue from the date this Declaration is recorded until the first Dwelling Unit is closed. In addition thereto, on or before the date of each Annual Meeting, the Board shall annually supply to all Unit Owners an itemized accounting of Association expenses and disbursements for the preceding year actually incurred and paid, together with an indication of which portions were for reserves, capital expenditures or repairs or payment of real estate taxes, and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves.

6.2. Reserve for Contingencies and Replacements.

(a) After the election of the first Board, all budgets adopted by the Board shall provide for reasonable reserves for capital expenditures and deferred maintenance for repair or replacement of the Common Elements. To determine the amount of reserves appropriate for the Association, the Board shall take into consideration the following: (i) the repair and replacement cost, and the estimated useful life, of the property which the Association is obligated to maintain, including but not limited to structural and mechanical components, surfaces of the Building and Common Elements, and energy systems and equipment; (ii) the current and anticipated return on investment of Association funds; (iii) any independent professional reserve study which the Association may obtain; (iv) the financial impact on Unit Owners, and the market value of the Units, of any assessment increase needed to fund reserves; and (v) the ability of the Association to obtain financing or refinancing.

(b) Notwithstanding the provisions of this Section 6.2, the Association may elect to waive in whole or in part the reserve requirements of this Section 6.2 by a vote of 2/3 of the total votes of the Association. The Association having elected under this subsection (b) may by a vote of 2/3 of the total votes of the Association elect to again be governed by the requirements of this Section 6.2.

(c) In the event the Association elects to waive all or part of the reserve requirements of this Section 6.2, that fact must be disclosed after the meeting at which the waiver occurs by the Association in the financial statements of the Association and, highlighted in bold print, in the response to any request of a prospective purchaser for information required by the Act; and no member of the Board or the managing agent of the Association shall be liable, and no course of action may be brought for damages

against these parties, for the lack or inadequacy of reserve funds in the Association budget.

(d) Subject to the provisions of Section 6.8, if the estimated cash requirement proves inadequate for any reason, including nonpayment of any Unit Owners' assessment, the Board may, at any time, levy a further assessment, which shall be separately assessed to the Unit Owners according to each Unit Owner's percentage ownership in the Common Elements. The Board shall serve notice of such further assessment on all Unit Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Unit Owners shall be obligated to pay the adjusted monthly amount.

6.3. Budget Determined by First Board.

When the first Board takes office, it shall determine the estimated cash requirement, as hereinabove defined, for the period commencing thirty (30) days thereafter and ending on December 31 of the calendar year in which said Board takes office. Assessments shall be levied against the Unit Owners during said period as hereinafter provided. Each Unit Owner shall be obligated to pay the monthly assessment attributed to his Unit Ownership for the period commencing on the date of the recordation of the deed conveying the Unit Ownership to such Unit Owner and ending on the date of the recordation of a deed conveying the Unit Ownership to a subsequent Unit Owner.

6.4. Failure to Prepare Annual Budget.

The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the Unit Owner shall not constitute a waiver or release in any manner of such Unit Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and, in the absence of any annual estimate or adjusted estimate, the Unit Owner shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period until the monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

6.5. Books and Records.

The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection by any Owner or any representative of the Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Unit Owner.

6.6. Status of Collected Funds.

All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and except for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the percentages set forth in Exhibit D.

6.7. Remedies for Failure to Pay Assessments.

(a) It shall be the duty of each Unit Owner to pay his proportionate share of the estimated cash requirements. Except as set forth in Section 6.1(b) hereof, each Owner shall be assessed his proportionate share of the estimated cash requirements according to his percentage share of the Common Elements, which share shall be payable in twelve (12) equal installments on the first day of each month, except that the amounts payable by Declarant shall be due on the last day of each month. Each unpaid monthly or special assessment or unpaid fine shall bear interest at the highest rate permitted by law commencing fifteen (15) days after its due date until paid. If a Unit Owner is in default in the monthly payment of the aforesaid charges or assessments due to the Association or is in default in the payment of any other expenses lawfully agreed upon, the Board may bring suit for and on behalf of itself and as representative of all Unit Owners to enforce collection thereof or to foreclose the lien therefor as hereinafter provided or to acquire possession of the defaulting Unit Owner's Unit (subject to the provisions of the following subsection (b)), or all of them; and there shall be added to the amount due the costs of said suit, together with legal interest and late charges, if any, and reasonable attorneys' fees and expenses.

(b) Prior to, and as a condition to, the filing of a suit by the Board to acquire possession of a defaulting Unit Owner's Unit for a default in the monthly payment of the aforesaid charges or assessments due the Association or for a default in the payment of any other expenses lawfully agreed upon, the Board shall serve a demand upon the defaulting Unit Owner setting forth the amount claimed, the time (not less than thirty (30) days) within which such amount must be paid, and the time period when the amount was originally due. If such amount claimed in the demand shall not be paid by the defaulting Unit Owner within the time prescribed in the demand, the Board may proceed to file suit to acquire possession of the defaulting Unit Owner's Unit. The demand shall be served either personally upon the defaulting Unit Owner or by registered or certified mail, return receipt requested, to the last known address of the defaulting Unit Owner, or in case no one is in actual possession of the Unit, then by posting such demand on the Unit. An action brought under this Section 6.7 to acquire possession of the defaulting Unit Owner's Unit shall not be barred or waived by the action of the Board in accepting payments from a Unit Owner for his proportionate share of the estimated cash requirements or of any other expenses lawfully agreed upon for any time period other than that covered by the demand sent in accordance with this subsection (b).

(c) If a Unit Owner shall fail or refuse to make any payment of the Common Expenses or the amount of any unpaid fine when due, the amount thereof together with

any interest, late charges, reasonable attorneys' fees and expenses incurred enforcing the covenants of this Declaration, the Act, rules and regulations of the Board or any applicable statute or ordinance, and costs of collections shall constitute a lien on the interest of the Unit Owner in the Property prior to all other liens and encumbrances, recorded or unrecorded, except only (x) taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of Illinois and other State or Federal taxes which by law are a lien on the interest of such Unit Owner prior to pre-existing recorded encumbrances thereon and (y) encumbrances on the interest of such Unit Owner recorded prior to the date of the failure or refusal of the Unit Owner to pay said charges, assessments or expenses, which by law would be a lien thereon prior to subsequently recorded encumbrances. Any action brought to extinguish the lien of the Association shall include the Association as a party. With respect to encumbrances which are neither bona fide first mortgages nor bona fide trust deeds and which encumbrances contain a statement of a mailing address in the State of Illinois where notice may be mailed to the encumbrancer thereunder, if and whenever and as often as the Board or its agent shall send, by United States certified or registered mail, return receipt requested to any such encumbrancer at the mailing address set forth in the recorded encumbrance a statement of the amounts and due dates of the unpaid Common Expenses and other charges with respect to the encumbered Unit Ownership, then such prior recorded encumbrance shall be subject to the lien of all unpaid Common Expenses and other charges with respect to such Unit Ownership which become due and payable within a period of ninety (90) days after the date of mailing of each such notice; provided further, that the lien of all Common Expenses and other charges on the encumbered Unit Ownership which become due and payable subsequent to the date a prior encumbrancer either (i) becomes a mortgagee in possession; (ii) accepts a conveyance of title or other interest in the Unit in lieu of foreclosure; (iii) acquires title to the Unit through foreclosure or other means; or (iv) has a receiver appointed, shall be and remain prior to the lien of such prior encumbrances. Except as otherwise provided in the preceding sentence, any such encumbrancer who obtains title to a Unit pursuant to the remedies provided in the mortgage or trust deed creating such encumbrance or foreclosure of such encumbrance will not be liable for such Unit's unpaid assessment which accrued prior to the acquisition of title or the date on which the encumbrancer comes into possession of the Unit, whichever occurs first. The purchaser of a Unit at a judicial foreclosure sale, or a mortgagee who receives title to a Unit by deed in lieu of foreclosure or judgment by common law strict foreclosure or otherwise takes possession pursuant to court order under the Illinois Mortgage Foreclosure Law, shall have the duty to pay the Unit's proportionate share of the Common Expenses for the Unit assessed from and after the first day of the month after the date of the judicial foreclosure sale, delivery of the deed in lieu of foreclosure, entry of a judgment in common law strict foreclosure, or taking of possession pursuant to such court order. A lien for Common Expenses shall be in favor of the members of the Board and their successors in office and shall be for the benefit of all other Unit Owners. Notice of the lien may be recorded by the Board, or if the Developer is the manager or has a majority of seats on the Board and the manager or the Board fails to do so, any Unit Owner may record notice of the lien. Upon the recording of such notice the lien may be foreclosed by an action brought in the name of the Board in the same manner as a mortgage of real property.



(d) The members of the Board and their successors in office, acting on behalf of the other Units Owners, shall have the power to bid on the interest so foreclosed at the foreclosure sale, and to acquire and hold, lease, mortgage and convey it. Anything herein contained to the contrary notwithstanding, to the extent the same is required by the Act, any encumbrancer may, from time to time, request in writing a written statement from the Board setting forth the unpaid Common Expenses with respect to the Unit covered by his encumbrance, and unless the request shall be complied with within twenty (20) days, all unpaid Common Expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a Unit may pay any unpaid Common Expenses payable with respect to the Unit, and upon such payment the encumbrancer shall have a lien on the Unit for the amount paid at the same rank as the lien of his encumbrance.

6.8. Operating Reserve.

At the time the initial sale of each Unit is closed, the purchaser of the Unit shall pay to the Association an amount equal to three (3) times the then current first full monthly assessment for such Unit. This sum shall be used and applied as a reserve for start-up costs and for a working capital fund in connection with all initial operating expenses for the Common Elements and held for future working capital needs. This payment shall not be refundable or be applied as a credit against the Unit Owner's monthly assessments.

6.9. Separate Assessments.

(a) All non-recurring Common Expenses, all Common Expenses not set forth in the budget of the Association as adopted, and all increases in the assessments over the amount adopted shall be separately assessed against all Unit Owners in accordance with procedures meeting the minimum requirements of Section 9 of the Act, as amended, or any statutory requirement succeeding said Section.

(b) Separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without being subject to Unit Owner approval or the provisions of Section 5.4(f)(ii) or 6.9(c). As used herein, "emergency" means an immediate danger to the structural integrity of the Common Elements or to the life, health, safety or property of the Unit Owners.

(c) Assessments for additions and alterations to the Common Elements or to Association-owned property not included in the adopted annual budget, shall be separately assessed and are subject to approval of two-thirds (2/3) of the total votes of all Unit Owners.

(d) The Board may adopt separate assessments payable over more than one fiscal year. With respect to multi-year assessments not governed by Sections 6.9(b) and (c), the entire amount of the multi-year assessment shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.

6.10. Forbearance.

The Association shall have no authority to forbear the payment of assessments by any Unit Owner.

6.11. Statement of Account.

Upon 10 days notice to the manager or Board and payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

7. COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY.

7.1. Restrictions.

The Units and Common Elements shall be occupied as follows:

(a) Residential Purposes. No part of the Property shall be used for other than housing, parking and related purposes for which the Property was designed. Each Dwelling Unit or any two or more adjoining Dwelling Units used together shall be used as a residence for a single family or such other uses permitted by this Declaration and for no other purpose. That part of the Common Elements separating any two or more adjoining Dwelling Units used together as aforesaid may be altered to afford ingress and egress to and from such adjoining Units in such manner and upon such conditions as shall be determined by the Board in writing. Each Garage Unit shall only be used for parking of conventional motor vehicles, including motorcycles.

(b) Obstruction of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be stored in the Common Elements (except in areas designed for such purpose and except in areas which are Limited Common Elements serving exclusively the Unit of the Unit Owner obstructing same) without the prior consent of the Board, except as hereinafter expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit.

(c) Hazardous Uses and Waste. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Building without the prior consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the Property, or which would be in violation of any law. No waste shall be committed in the Common Elements.

(d) Exterior Exposure of Building. Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Building, and no sign, awning, canopy, shutter, radio or television antenna greater than eighteen (18) inches in diameter shall be affixed to or placed upon the Balconies, exterior walls or roof or any part thereof, without the prior consent of the Board and in each case subject to the terms of the Reciprocal Agreement. Any repair or improvement to a Unit or a Limited Common Element which would change the

appearance of the exterior of the Unit or a Common Element is subject to the prior approval of the Board. Window coverings exposed to the outside shall be a uniform white or off-white color, subject to exceptions permitted by the Board on an individual basis.

(e) Pets. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that dogs, cats, or other household pets may be kept in Dwelling Units, subject to rules and regulations adopted by the Board, provided that such permitted pets are not kept, bred, or maintained for any commercial purpose; provided further that any pet permitted to be kept hereunder which causes or creates, in the opinion of the Board, a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Board. The Board shall have sole discretion to determine whether such a nuisance or disturbance exists.

(f) Nuisances. No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants.

(g) Impairment of Structural Integrity of Building. Nothing shall be done in any Unit or in, on or to the Common Elements, or in, on or to the Limited Common Elements, which will impair the structural integrity of the Building or which would structurally change the Building, except as is otherwise provided herein. No Unit Owner shall overload the electric wiring in the Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

(h) Laundry or Rubbish. No clothes, sheets, blankets, laundry of any kind or other Sections shall be hung out of or exposed on any part of the Dwelling Units, Garage Units or the Common Elements. The Dwelling Units, Garage Units and the Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

(i) Lounging or Storage in Common Elements. Except to the extent that specific areas are designated therefor by the Board, there shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Elements, except that baby carriages, bicycles and other personal property may be stored in a common storage area, if any, designated for that purpose.

(j) Prohibited Activities and Signs. Except as otherwise provided in Sections 7.1(n) and (o) hereof, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, or otherwise, shall be conducted, maintained, or permitted on any part of the Property, nor, except with the consent of the Board, shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted by any Unit Owner on any part of the Property or in any Unit therein. Notwithstanding the foregoing, the right is

reserved by Declarant, the Developer and their respective agents to place “For Sale” or “For Rent” signs on any unsold or unoccupied Units and to place such other signs on the Property and do such other things as may be necessary or advisable in their sole opinion to facilitate the sale or lease of unsold Units.

(k) Alterations of Common Elements. Nothing shall be altered or constructed in or removed from the Common Elements (including Limited Common Elements), except upon the written consent of the Board.

(l) Access and Use Rights. Notwithstanding anything herein contained to the contrary, Declarant and Developer and their respective contractors, subcontractors, agents and employees reserve the right and shall be entitled at all times (i) to access, ingress and egress to and from the Building and Property as may be required or desirable in connection with the marketing (including sales and leasing) of Units and the construction of the Common Elements and Units, (ii) to erect and maintain on the Property any advertising, signs, banners, lighting, and other sales or rental devices for the purpose of aiding the sale or leasing of Units, and (iii) to store construction materials on the Property when and where they deem necessary in connection with the construction of the Units and the Common Elements. In addition thereto, Declarant and Developer reserve the right to and may occupy or grant permission to any person or entity to occupy, with or without rental, as determined by Declarant or Developer, one or more Units for management, business or promotional purposes, including clerical activities, sales offices, leasing offices, construction offices, model Units for display and the like, and to utilize all Garage Units which have not been conveyed by Declarant or Developer for ingress, egress and transient parking for all invitees including but not limited to employees and agents, in connection with the construction, development and sale or leasing of Units.

(m) Parking Area Access. Owners and Occupants of the Garage Units who are not also Owners or Occupants of Dwelling Units may not use the Building Hallways and other areas of the Building which are exclusively intended for use by the Dwelling Unit Owners.

(n) Certain Personal Professional Activities Permitted. The Unit restrictions in subsections (a) and (j) of this Section 7.1 shall not, however, be construed in such a manner as to prohibit an Owner of a Dwelling Unit from:

- (i) maintaining his personal professional library therein;
- (ii) keeping his personal, business or professional records or accounts therein; or
- (iii) handling his personal, business or professional telephone calls or correspondence therefrom.

Such uses are expressly declared customarily incident to the principal residential use and not in violation of subsections (a) or (j) of this Section 7.1.

(o) Commercial Use of Garage Units Permitted. Any Owner of a Garage Unit may utilize such Garage Unit for the parking of a conventional motor vehicle or motorcycle in connection with a the operation of a trade or business, including without limitation employee and customer parking (which may include valet parking), whether or not such business is located within the Commercial Property.

7.2. Occupants.

The terms, conditions and provisions of this Declaration, and the rules and regulations promulgated pursuant hereto, shall be binding upon any Occupant, and such terms, conditions, provisions, rules and regulations shall be deemed incorporated in any agreement granting such Occupant the right of possession of any Unit or portion thereof.

7.3. Leases.

The provisions of the Act, this Declaration, the By-Laws, other condominium instruments, and rules and regulations that relate to the use of an individual Unit or the Common Elements shall be applicable to any person leasing a Unit and shall be deemed to be incorporated in any lease executed or renewed on or after the date of this Declaration. A Unit Owner may lease all (but not less than all) of the Unit Owner's Dwelling Unit, provided that no Dwelling Unit may be leased for less than six (6) months or for hotel or transient purposes. The Unit Owner leasing the Unit shall deliver a copy of the signed lease to the Board or if the lease is oral, a memorandum of the lease, not later than the date of occupancy or 10 days after the lease is signed, whichever occurs first. The Association may prohibit a tenant from occupying a Garage Unit until the Unit Owner complies with the requirements prescribed by this Section. In addition to any other remedies, by filing an action jointly against the tenant and the Unit Owner, the Association may seek to enjoin a tenant from occupying a Garage Unit or seek to evict a tenant under the provisions of Section IX of the Code of Civil Procedure for failure of the lessor-owner to comply with the leasing requirements prescribed by this Section 7.3 or by this Declaration, the By-Laws and rules and regulation. The Board may proceed directly against a tenant, at law or in equity, or under the provisions of Section IX of the Code of Civil Procedure, for any other breach by tenant of any covenants, rules, regulations or By-Laws. The remedies set forth in Section IX of the Code of Civil Procedure shall be available to the Association and against the Unit Owner and the Unit Owner's lessee in the event of any violation of this Section or any other provision of this Declaration concerning Unit leasing.

7.4. No Delegation.

Except as specifically provided in this Declaration, a Unit Owner may not assign, delegate, transfer, surrender, or avoid the duties, responsibilities, and liabilities of a Unit Owner under the Act, this Declaration, the By-Laws, the condominium instruments, or the rules and regulations of the Association; and any such attempted assignment, delegation, transfer, surrender, or avoidance shall be deemed void.

8. DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDING AND EMINENT DOMAIN.

8.1. Sufficient Insurance.

In the event the improvements forming a part of the Property, or any portion thereof, including any Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, plus the reserve for contingencies and replacements, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds and if necessary, the reserve for contingencies and replacements, shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event that within one hundred eighty (180) days after said damage or destruction, the Unit Owners shall elect to sell the Property as hereinafter provided in Section 9 of this Declaration, or to withdraw the Property from the provisions of this Declaration and from the provisions of the Act as therein provided, then such repair, restoration or reconstruction shall not be undertaken. In the event such repair, restoration or reconstruction is not undertaken, the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit D, after first paying from the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

8.2. Insufficient Insurance.

(a) In case of fire or other disaster, if the insurance proceeds and the reserve for contingencies and replacements are insufficient to reconstruct the Building and the Unit Owners and all other parties in interest do not voluntarily make provision for reconstruction of the Building within one hundred eighty (180) days from the date of damage or destruction, then the provisions of the Act shall apply, and the Board may record a notice setting forth such facts and upon the recording of such notice:

(i) The Property shall be deemed to be owned in common by the Unit Owners;

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

(iii) Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Unit Owner in the Property as provided herein; and

(iv) The Property shall be subject to an action for partition at the suit of any Unit 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 fund and shall be divided among all the Unit Owners in a percentage equal to the

percentage of undivided interest owned by each Unit Owner in the Property, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Unit Owner.

(b) In the case of fire or other disaster in which fewer than one-half (1/2) of the Units are rendered uninhabitable, if the insurance proceeds and the reserve for contingencies and replacements are insufficient to reconstruct the Building, upon the affirmative vote of not fewer than three-fourths (3/4) of the Unit Owners voting at a meeting called for that purpose, the Building or other portion of the Property shall be reconstructed. The meeting shall be held within thirty (30) days following the final adjustment of insurance claims, if any. Otherwise, such meeting shall be held within ninety (90) days of the occurrence. At such meeting the Board, or its representative, shall present to the members present an estimate of the cost of repair or reconstruction, and the estimated amount of necessary assessments against each Unit Owner.

(c) In the case of fire or other disaster, if the insurance proceeds and the reserve for contingencies and replacements are insufficient to reconstruct the Building, upon the affirmative vote of not fewer than three-fourths (3/4) of the Unit Owners voting at a meeting called for that purpose, any portion of the Property affected by such damage or destruction may be withdrawn from the Act. Upon the withdrawal of any Unit or portion thereof, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board. The payment of just compensation, or the allocation of any insurance, or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Any proceeds available from the withdrawal of any Limited Common Elements will be distributed in accordance with the interests of those entitled to their use.

### 8.3. Reallocation of Common Elements and Condemnation Award.

In the event any portion of the Property is taken by condemnation or eminent domain proceedings, provision for withdrawal from the provisions of the Act of such portion so taken may be made by the Board. Upon the withdrawal of any Unit or portion thereof due to eminent domain, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis,

which need not be a Unit's percentage interest. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Proceeds available from the withdrawal of any Limited Common Element will be distributed in accordance with the interests of those entitled to their use. The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for the acquisition of the Common Elements or any part thereof. In the event of the total taking of the Property by eminent domain, the condemnation award available in that connection shall be divided by the Association among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit D, after first paying from the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

#### 8.4. Cessation and Adjustment of Common Expenses.

Upon the withdrawal of any Unit, the responsibility for the payment by the Unit Owner of assessments on such Unit due after such withdrawal shall cease, and the payment by the Unit Owners of assessments on all Units not withdrawn shall be adjusted by the Board. Such adjustment shall be determined on the basis of the percentage of interest in the Common Elements appurtenant to the Units not withdrawn, as reallocated pursuant to the provisions of this Section. Upon the withdrawal of a portion of any Unit, the responsibility for the payment by the Unit Owner of assessments on such Unit (as well as the responsibility for the payment by the Unit Owners of assessments on all Units not withdrawn) shall continue, but such payments shall be adjusted by the Board. Such adjustment shall be determined on the basis of the percentage of interest in the Common Elements appurtenant to each Unit, a portion of which has been withdrawn, and appurtenant to all other Units which have not been withdrawn, as reallocated pursuant to the provisions of this Section.

#### 8.5. Repair, Restoration or Reconstruction.

As used in this Section, "repairs, restoration, or reconstruction" means restoring the damaged Building or portion thereof (excluding additions, alterations, improvements or betterments to a Unit) to substantially the same condition in which it existed prior to the fire or other disaster, with each Unit and Common Elements having the same vertical and horizontal boundaries as before. Any repairs, restoration or reconstruction shall be in accordance with law, this Declaration, and the Act.

### 9. SALE OF THE PROPERTY.

#### 9.1. Voluntary Sale of Property.

The Owners, by unanimous affirmative vote, may elect to sell the Property as a whole at any meeting called for that purpose. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments, and to perform all acts as in manner and form may be necessary to effect such sale. Proceeds of such sale, after payment of all expenses incurred in connection with the sale, shall be distributed



to each Unit Owner (subject to the rights of said Unit Owner's mortgagee) according to his percentage interest in the Common Elements.

9.2. Removal from Act.

All of the Unit Owners may remove the Property from the provisions of the Act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the Units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the Unit Owner. Upon such removal the Property shall be deemed to be owned in common by all the Owners. 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 Elements.

10. REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS.

10.1. Abatement and Enjoyment.

The violation of any restriction or condition or regulation adopted by the Board, or the breach of any covenant or provision herein contained shall give the Board the right, in addition to the rights set forth in the next succeeding Section and in Section 6.7:

(a) to enter upon the property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and Declarant, or its successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy by appropriate legal proceedings (including but not limited to a suit for damages), either at law or in equity, the continuance of any breach; or

(c) to take possession of such Unit Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law.

A Unit Owner determined to have violated this Declaration shall reimburse the Association for its costs of enforcement, including, but not limited to, reasonable attorneys' fees and expenses.

10.2. Involuntary Sale.

If any Unit Owner (either by his own conduct or by the conduct of any other Occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Board, including the failure to pay assessments when due, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall occur repeatedly during any thirty (30) day period after written notice or request to cure such violation from the Board, then the Board shall have the power to issue to the defaulting Unit Owner a ten

(10) day notice in writing to terminate the rights of the said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use or control his Unit; and thereupon an action in equity may be filed by the members of the Board against the defaulting Unit Owner for a decree of mandatory injunction against the Unit Owner or Occupant or, in the alternative, a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him on account of the breach of covenant, restriction, provision or regulation, and ordering that all the right, title and interest of the Unit Owner in the Unit Ownership shall be sold (subject to the lien of any existing encumbrance) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall be requested to enjoin and restrain the defaulting Unit Owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge any prior encumbrance, court costs, court reporter charges, reasonable attorneys' fees and expenses, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the Unit Owner. The purchaser at such sale shall, upon confirmation thereof, thereupon be entitled to a deed to the Unit Ownership and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree may so provide, that the purchaser shall take the Unit Ownership sold subject to this Declaration, and the purchaser shall become a member of the Association, in the place and stead of the defaulting Unit Owner.

### 10.3. Other Remedies.

In the event of any default by any Unit Owner, his tenant, invitee or guest in the performance of his obligations under the Act or under this Declaration, the By-Laws, or the rules and regulations of the Board, the Board or its agents shall have such rights and remedies as provided in the Act or this Declaration and the By-Laws including the right to maintain an action for possession against such defaulting Unit Owner or his tenant for the benefit of all the other Unit Owners in the manner prescribed by Section IX of the Code of Civil Procedure.

Any attorneys' fees incurred by the Association arising out of a default by any Unit Owner, his tenant, invitee or guest in the performance of any of the provisions of the Act, this Declaration, the By-Laws, the rules and regulations or any applicable statute or ordinance shall be added to, and deemed a part of, his respective share of the Common Expense.

## 11. ANNEXING ADDITIONAL PROPERTY

### 11.1. Additional Parcel.

The Declarant, Developer and their successors and assigns, hereby reserve the right and option, at any time and from time to time, within seven (7) years from the date of the recording of this Declaration in the Office of the Recorder of Deeds of Cook County, Illinois, to add-on and annex to the Property, from time to time, all or any portion of the Non-Condominium Residential Property and in connection therewith to reallocate percentage interests in the Common Elements as hereinafter described, by recording an amendment or amendments to this Declaration executed by the Declarant (every such instrument being hereinafter referred to as an

“**Amendment to Condominium Declaration**”) which shall set forth the legal description of the additional parcel or parcels within the Non-Condominium Residential Property to be annexed to the Property and which shall otherwise be in compliance with the requirements of the Act. Upon the recording of every such Amendment to Condominium Declaration, the Additional Parcel described herein shall be deemed submitted to the Act and governed in all respects by the provisions of this Declaration and shall thereupon become part of the Property. No portion or portions of the Non-Condominium Residential Property shall be subject to any of the provisions of this Declaration unless and until an Amendment to Condominium Declaration is recorded annexing such portion or portions to the Property aforesaid. The Unit Owner shall have no rights whatsoever in or to any portion of the Non-Condominium Residential Property, unless and until an Amendment to Condominium Declaration is recorded annexing such portion as aforesaid. Upon expiration of said seven (7) year period, no portion of the Non-Condominium Residential Property which has not theretofore been made a part of or annexed to the Property shall thereafter be annexed to the Property. No portion of the Non-Condominium Residential Property must be added to the Property. Portions of the Non-Condominium Residential Property may be added to the Property at different times within such seven (7) year period. Except as may be required by applicable laws and ordinances, there shall be no limitations (i) on the order in which portions of the Non-Condominium Residential Property may be added to the Property, or (ii) fixing the boundaries of the portions. The maximum number of Units which may be created on the Non-Condominium Residential Property is seventeen (17).

11.2. Amendments to Condominium Declaration.

Every Amendment to Condominium Declaration shall include:

(a) The legal description of the portion or portions of the Parcel which shall add to the legal description of the Parcel that portion or portions of the Non-Condominium Residential Property annexed to the Property;

(b) An amendment to the Plat which shall show the boundaries of the portion or portions of the Non-Condominium Residential Property annexed to the Parcel, and delineating and describing the Units of the annexed Non-Condominium Residential Property; and

(c) An amendment to Exhibit D attached hereto which shall set forth the amended percentages of ownership interest in the Common Elements, including the Common Elements attributable to those portions of the Non-Condominium Residential Property annexed to the Property, allocable to every Unit, including all existing Units and additional Units, if any, added by such Amendment to Condominium Declaration.

11.3. Determination of Amendments to Percentages of Ownership Interest in Common Elements.

The percentages of ownership interest in the Common Elements allocable to every Unit, as amended by each Amendment to Condominium Declaration, shall be determined as follows:

(a) The Common Elements, as amended by such Amendment to Condominium Declaration, shall be deemed to consist of the Common Elements as

existing immediately prior to the recording of such Amendment to Condominium Declaration (the “**Existing Common Elements**”);

(b) The Units, as amended by such Amendment to Condominium Declaration, shall be deemed to consist of the Units as existing immediately prior to the recording of such Amendment to Condominium Declaration (the “**Existing Units**”) and the Units added by such Amendment to Condominium Declaration (the “**Added Units**”);

(c) The value of the Added Units (which value shall be determined by Developer) shall be added to the value of the Existing Units (which value shall be determined by Developer) and the total of all such values shall be deemed to be the aggregate value of all of the Units as a whole. Values shall be determined by Developer as of the date of recording of every Amendment to Condominium Declaration and shall be unconditionally binding and conclusive for all purposes notwithstanding the sale price of any Unit or Units.

(d) The percentage of ownership interest in the entire Common Elements (both the Existing Common Elements and the Added Common Elements) to be allocated among all of the Units (both the Existing Units and the Added Units) shall be computed by dividing the value of every Unit, as determined by Developer as described in the preceding subparagraph (c) by the value of the Units as a whole, as determined by the Developer as described in the preceding subparagraph (c);

(e) The Existing Units shall be entitled to their respective percentages of ownership interest in the Common Elements, as set forth in such Amendment to Condominium Declaration in the Added Common Elements and in the Existing Common Elements.

(f) The Added Units shall be entitled to their respective percentages of ownership interest in the Common Elements, as set forth in such Amendment to Condominium Declaration, in the Added Common Elements and in the Existing Common Elements.

(g) All of the provisions of this Declaration, as amended by every successive Amendment to Condominium Declaration, shall be deemed to apply to all of the Units (both the Added Units and the Existing Units) and to all of the Common Elements (both the Added Common Elements and the Existing Common Elements); and

(h) The recording of an Amendment to Condominium Declaration shall not alter or affect the amount of any lien for Common Expenses due from the owner of any Existing Unit prior to such recording, nor the respective amounts theretofore assessed to or due from the owner or owners of Existing Units for Common Expenses or other assessments.

#### 11.4. Existing Mortgages.

Upon recording of every Amendment to Condominium Declaration, the lien of every mortgage encumbering an Existing Unit, together with its appurtenant percentage of ownership interest to the Existing Common Elements, shall automatically be deemed to be adjusted and amended to encumber such Unit and the respective percentage of ownership interest in the Common Elements for such Existing Unit as set forth in such Amendment to Condominium

Declaration, and the lien of such mortgage shall automatically attach to such percentage interest in the Added Common Elements.

11.5. Binding Effect.

Every Unit Owner and every mortgagee, grantee, heir, administrator, executor, legal representative, successor and assign of such Unit Owner, by such person's or entity's acceptance of any deed or mortgage or other interest in or with respect to any Unit Ownership, shall be deemed to have expressly agreed and consent to (i) each and all of the provisions of this Section 11; (ii) the recording of every Amendment to Condominium Declaration which may amend and adjust such person's or entity's respective percentage of ownership interest in the Common Elements including the Existing Common Elements and the Added Common Elements from time to time as provided in this Section 11; and (iii) all of the provisions of every Amendment to Condominium Declaration which may hereafter be recorded in accordance with the provisions of this Section 11. A power coupled with an interest is hereby granted to the Developer as attorney-in-fact to amend and adjust the percentages of undivided ownership interest in the Common Elements from time to time in accordance with every such Amendment to Condominium Declaration recorded pursuant hereto. The acceptance by any person or entities of any deed, mortgage or other instrument with respect to any Unit Ownership, in addition to the foregoing, shall be deemed to constitute a consent and agreement to and acceptance and confirmation by such person or entity of such power to such attorney-in-fact and of each of the following provisions as though fully set forth in such deed, mortgage or other instrument:

(a) The percentage of ownership interest in the Common Elements appurtenant to such Unit shall automatically be deemed reconveyed effective upon the recording of every Amendment to Condominium Declaration and reallocated among the respective Unit Owners in accordance with the amended and adjusted percentages set forth in every such Amendment to Condominium Declaration.

(b) Such deed, mortgage or other instrument shall be deemed given upon a conditional limitation to the effect that the percentage of ownership interest in the Common Elements appurtenant to such Unit shall be deemed divested pro tanto upon the recording of every such Amendment to Condominium Declaration and revested and reallocated among the respective Unit Owners in accordance with the amended and adjusted percentages set forth in every such Amendment to Condominium Declaration.

(c) To the extent required for the purposes of so amendment and adjusting such percentages of ownership interest in the Common Elements aforesaid, a right of revocation shall be deemed reserved by the grantor of such deed, mortgage or other instrument with respect to such percentage of ownership interest in the Common Elements granted therein.

(d) Such adjustments in the percentages of ownership interest in the Common Elements, as set forth in every such Amendment to Condominium Declaration, shall be deemed to be made by agreement of all Unit Owners and other persons having any interest in the Property, and shall also be deemed to be an agreement of all Unit Owners and such other persons to such changes within the contemplation of the Act; and

(e) Every Unit Owner, by acceptance of the deed conveying such Unit Owner's Unit Ownership, agrees for himself or herself and all those claiming under such Unit Owner, including mortgagees, that this Declaration, and every Amendment to Condominium Declaration, is and shall be deemed to be in accordance with the Act.

12. GENERAL PROVISIONS.

12.1. Certain Declarant and Developer Rights.

(a) Anything herein to the contrary notwithstanding, until a date not later than sixty (60) days after Declarant shall have conveyed title to not less than seventy-five (75%) percent of the Units, or a date three years after this Declaration is recorded, whichever shall first occur, the Developer or its designees shall exercise the powers, rights, duties and functions of the Board and the Association, with all the rights, indemnities and immunities contained in this Declaration; provided, however, that the Developer or its designees may in their sole and absolute discretion relinquish such powers, rights, duties and functions at any time prior thereto. If, without fault of Declarant or the Developer, the Unit Owners shall not have elected a Board before the powers of the Developer shall have expired hereunder, the Developer may, but shall not be obligated to, continue to serve and have the powers herein set forth until such Board is elected, but in all events shall resign if and when required to resign under applicable law.

(b) Declarant and the Developer shall each have the right to specifically assign the rights, privileges, powers, options and benefits reserved to each of them under this Declaration, and upon such specific assignment, the assignee shall be entitled to said rights, privileges, powers, options and benefits as fully and to the same extent and with the same effect as if such assignee were herein by name specifically granted such rights, privileges, powers, options and benefits.

(c) All powers, privileges, easements, rights, reservations, restrictions and limitations herein provided or otherwise created for the benefit of Declarant shall inure to the benefit of Declarant's designees, successors and assigns, including, without limitation, any holder of a mortgage from Declarant which holder acquires Declarant's interest in all or part of the Property by foreclosure or deed in lieu thereof.

(d) Any contract, lease, or other agreement made prior to the election of a majority of the Board other than Developer by or on behalf of Unit Owners, individually or collectively, the Association or the Board, which extends for a period of more than two (2) years from the recording of this Declaration, shall be subject to cancellation by more than one-half (1/2) of the votes of the Unit Owners other than Developer cast at a special meeting of members called for that purpose during a period of ninety (90) days following expiration of the two (2) year period. At least sixty (60) days prior to the expiration of the two (2) year period, the Board or, if the Board is still under Developer control, then

control, then the Developer shall send notice to every Unit Owner notifying them of the provision, what contracts, leases and other agreements are affected, and the procedure for calling a meeting of the Unit Owners for the purpose of voting on termination of such contracts, leases or other agreements. During the ninety (90) day period, the other party to such contract, lease or other agreement shall also have the right of cancellation.

12.2. Notices to Mortgage Lenders.

Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any Unit Ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Unit Owner or Unit Owners whose Unit Ownership is subject to such mortgage or trust deed. Each mortgagee or other lienholder of a Unit shall provide an address to the Association at the time the lien or mortgage is recorded at which address the Association shall send notice to such mortgagee or lienholder of any eminent domain proceeding to which the Association thereafter becomes a party. If the mortgagee or lienholder has not provided an address for notice purposes to the Association, then such notice shall be sent to all mortgagees or lienholders which are named insureds of the master policy of insurance which exists or may exist on the Unit.

12.3. Service of Notice.

Any notice required or permitted to be given to:

(a) the Board or the Association, may be delivered to any officer of the Association, or the registered agent thereof, if incorporated, either personally or by mail addressed to such member or officer at his last known address appearing on the records of the Association;

(b) the Unit Owners, may be delivered either personally or by mail addressed to such Unit Owner at his last known address appearing on the records of the Association.

Any notice required or permitted to be given hereunder and delivered by mail shall be sent certified, return receipt requested, with postage prepaid and shall be deemed given upon depositing the notice in the United States mails.

12.4. Service of Notices on Devisees and Personal Representatives.

Notices required to be given any devisee or personal representative of a deceased Owner may be delivered either personally or by mail to such party at his or its address appearing in the records of the court wherein the estate of such deceased Owner is being administered.

12.5. Covenants to Run With Land.

Each grantee of Declarant, by the acceptance of a deed of conveyance, or each purchaser under articles of agreement for deed or under any Installment Contract or contract for any deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations,

liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest in said land, and shall inure to the benefit of such Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every instrument of conveyance.

12.6. Non-Waiver of Covenants.

No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

12.7. Waiver of Damages.

Neither Declarant nor the Developer nor their respective representatives or designees shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authority granted to or delegated by or pursuant to this Declaration, or in the Declarant's (or the Developer's or their respective representatives' or designees') capacity as developer, contractor, Owner, manager, seller or lessor of the Property whether or not such claim (a) shall be asserted by any Owner, Occupant, the Board or the Association, or by any person or entity claiming through any of them; or (b) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (c) shall arise ex contractu or ex delictu (except in case of willful malfeasance). Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Owner, Occupant, the Board, the Association, and their respective agents, employees, guests, and invitees, or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to function, or disrepair of, any utility services.

12.8. Amendments to Declarations.

(a) Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Fannie Mae, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's 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, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering the Units, (iii) to bring this Declaration into compliance with the Act, or (iv) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant and/or the Developer



to vote in favor of, make, or consent to a Special Amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant and/or the Developer to vote in favor of, make, execute and record Special Amendments. The right of Declarant and/or the Developer to act pursuant to rights reserved or granted under this Section shall terminate at such time as Declarant or Developer no longer holds or controls title to a Unit.

(b) If there is any Unit Owner other than Declarant and/or the Developer, the condominium instruments may be amended only upon the affirmative vote of two-thirds (2/3) of the Unit Owners; provided, however, that if any provision of the Act or any other provision of this Declaration expressly provides for different methods of amendment or different majorities of affirmative votes necessary to amend, such provisions shall control over the foregoing provisions of this Section 12.8(b). Prior to the recording of any amendment to the condominium instruments, an affidavit, executed by an officer of the Association, shall be attached to such amendment. Such affidavit must certify that the requisite affirmative vote of Unit Owners (or of the Board, if applicable) and the approval of all mortgagees having bona fide liens of records against the Units (only if the amendment in question is such that Section 12.8(h) of this Declaration expressly requires such approval by mortgagees) has been made and given and that a copy of the amendment has been mailed by certified mail to all mortgagees having bona fide liens of record against the Units no less than ten (10) days prior to the date of such affidavit.

(c) If there is an omission or error in this Declaration, the By-Laws or other condominium instruments, the Association may correct the error or omission by an amendment to this Declaration, the By-Laws, or other condominium instrument in such respects as may be required to conform to the Act, and any other applicable statute or to this Declaration by vote of two-thirds (2/3) of the members of the Board or by a majority vote of the Unit Owners at a meeting called for such purpose, unless the Act specifically provides for greater percentages or different procedures.

(d) If through a scrivener's error, a Unit has not been designated as owning an appropriate undivided share of the Common Elements or does not bear an appropriate share of the Common Expenses or if all the Common Expenses or all of the Common Elements in the Property have not been distributed in this Declaration, so that the sum total of the shares of Common Elements which have been distributed or the sum total of the shares of the Common Expenses fails to equal 100%, or if it appears that more than 100% of the Common Elements or Common Expenses have been distributed, the error may be corrected by operation of law by filing an amendment to this Declaration approved by vote of two-thirds (2/3) of the members of the Board or a majority vote of the Unit Owners at a meeting called for such purpose which proportionately adjusts all percentage interests so that the total is equal to 100% by modification being made in the undivided interest in the Common Elements, the number of votes in the Association or the liability for Common Expenses appertaining to the Unit.

(e) If an omission or error or a scrivener's error in this Declaration, the By-Laws, or other condominium instrument is corrected by vote of two-thirds (2/3) of the members of the Board pursuant to the authority established in Sections 13.8(c) and (d), the Board upon written petition by Unit Owners with at least twenty percent (20%) of the votes of the Association filed within thirty (30) days of the Board action shall call a meeting of the Unit Owners within thirty (30) days of the filing of the petition to consider the Board action. Unless a majority of the votes of the Unit Owners of the Association are cast at the meeting to reject the action, such action is ratified whether or not a quorum is present.

(f) The procedures for amendments set forth in Sections 13.8(c), (d) and (e) cannot be used if such an amendment would materially or adversely affect property rights of the Unit Owners unless the affected Unit Owners consent in writing. Sections 13.8(c), (d) and (e) do not restrict the powers of the Association to otherwise amend this Declaration, the By-Laws or other condominium instruments, but authorizes a simple process of amendment requiring a lesser vote for the purpose of correcting defects, errors, or omissions when the property rights of the Unit Owners are not materially or adversely affected.

(g) If there is an omission or error in this Declaration, the By-Laws or other condominium instruments, which may not be corrected by an amendment procedure set forth in Sections 13.8(c) and (d), then the Circuit Court in the County in which the Property is located shall have jurisdiction to hear a petition of one or more of the Unit Owners thereon or of the Association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the Unit Owners to determine the most acceptable correction. All Unit Owners in the Association must be joined as parties to the action. Service of process on Unit Owners may be by publication, but the plaintiff shall furnish all Unit Owners not personally served with process with copies of the petition and final judgment of the court by certified mail return receipt requested, at their last known addresses.

(h) The provisions of this Section 12.8 hereof may be amended, changed or modified only by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by all members of the Board, all of the Unit Owners and all mortgagees having bona fide liens of record against any Unit.

(i) Any amendment, change or modification of the condominium instruments shall be effective upon the recording of such instrument in the Office of the Recorder of Deeds of Cook County, Illinois, unless the instrument sets forth a different effective date. No provision in the condominium instruments may be amended, changed or modified so as to conflict with the provisions of the Act. A copy of any amendment, change or modification shall be provided to all Unit Owners. Unless otherwise provided by the Act, amendments to the condominium instruments shall be executed and recorded by the President of the Association or by such other officer authorized by the Board.

(j) No amendment which affects the rights, privileges or obligations of Declarant or its agents, successors or assigns shall be effective without the prior written consent (contained on the face of any such amendment) of any such party whose rights, privileges or obligations are, or would be, so affected.

(k) Except to the extent authorized by provisions of the Act and except as otherwise specifically provided in Sections 12.8(c) and (d) hereof (as qualified by Section 12.8(f)), no amendment to the condominium instruments (including any amendment authorized by Section 12.8(a)) shall change the boundaries of any Unit or the undivided interests in the Common Elements, the number of votes in the Association or the liability for Common Expenses appertaining to a Unit.

#### 12.9. Severability.

The invalidity of any covenant, restriction, condition, limitation, or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

#### 12.10. Perpetuities and Restraints on Alienation.

If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the now living lawful descendants of the President of the United States and the United States Senators from the State of Illinois serving at the time of recordation hereof.

#### 12.11. Interpretation of Declaration.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium apartment development.

#### 12.12. Ownership by Trust.

In the event title to any Unit Ownership is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the trust property remain vested in the trust beneficiary, then the trust estate under such trust and the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit Ownership. No liability shall be asserted against any such title holding trustee personally for payment of any claim, lien or obligation or for the performance of any agreement, covenant or undertaking hereby created, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part thereon, but the amount thereof shall continue to be a charge or lien upon the Unit Ownership, notwithstanding any changes in the beneficial interest of any such trust or transfers of title to the

beneficiaries of the title holding trust or to others. Subject to the foregoing, all rights, remedies and privileges available to any such trustee Unit Owner shall be exercisable either by such trustee or by its beneficiaries; and all notices, consents and acts of the beneficiaries of any such trustee shall be binding, the same as if they were the notices, consents or acts of such trust. The term “beneficiary” and “beneficiaries” shall mean the persons owning the entire beneficial interest of a trust whether one or more.

12.13. Exculpation of Board Members.

Neither the Board nor any person exercising the powers of the Board, nor the Association, shall be liable to the Unit Owners for any mistake of judgment, or any acts of omissions made in good faith. The Unit Owners shall indemnify and hold harmless each of the persons described above against all contractual liability to others arising out of contracts made by them on behalf of the Unit Owners or the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. Such persons shall have no personal liability with respect to any contract made by them on behalf of the Unit Owners or the Association, nor for injury to persons or damage to or loss of property, wherever located and however caused, under claims arising in whole or in part as a result of their membership on the Board. The liability of any Unit Owner arising out of any contract made by such persons or out of the aforesaid indemnity shall be limited to such proportion of the total liability thereunder as his percentage interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements. Each agreement made by such persons or officers or by the managing agent on behalf of the Unit Owners or the Association shall be executed by such person or the managing agent, as the case may be, as agents for the Unit Owners or for the Board or Association.

12.14. Rights of Occupants.

Subject to the provisions of Section 7.4, the rights of an Owner hereunder to the use of the Common Elements and services and amenities provided by the Association shall extend to any lawful Occupant of such Owner’s Unit.

12.15. Miscellaneous Provisions Respecting Mortgages.

The following provisions are intended for the benefit of each holder of a recorded first mortgage or trust deed encumbering a Unit (“First Mortgagee”) and to the extent, if at all, that any other provisions of this Declaration conflict with the following provisions, the following provisions shall control:

(a) Unless greater than two-thirds (2/3) of the First Mortgagees (based upon one vote for each first mortgage owned) have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to:

(i) By act or omission seek to terminate this Declaration or withdraw the Property from the provisions of the Act, except for abandonment provided by the Act in case of substantial loss to or condemnation of the Units and/or the Common Elements;

(ii) Except as specifically provided in Paragraph 5 hereof or the Act, change the pro rata interest or obligations of any individual Unit for the purpose of:

(A) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or

B) determining the pro rata share of ownership of each Unit in the Common Elements;

(iii) Partition or subdivide any Unit except as permitted under the Act;

(iv) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (other than the granting of easements for public utility or for other public purposes consistent with the intended use of the Common Elements);

(v) Use hazard insurance proceeds for losses to the Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of the Property, except as provided by the Act in case of substantial loss to the Units and/or Common Elements;

(vi) Adopt an amendment to this Declaration which (a) changes Section 6.7(c), (b) changes this Section 12.15 or any other provision of this Declaration which specifically grants rights to First Mortgagees, (c) materially changes insurance and fidelity bond requirements, or (d) imposes a right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Unit Ownership; or

(vii) Sell the Property.

(b) All taxes, assessments and charges which may become liens subsequent to the recordation of this Declaration and prior to the first mortgage under the laws of the State of Illinois shall relate only to the individual Unit and not to the Property as a whole;

(c) No Unit Owner, or any other party, shall have priority over any rights of the First Mortgagee of a Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements;

(d) The First Mortgagee will be entitled, upon request, to written notification from the Association of any default in the performance by the borrower of any obligation under this Declaration which is not cured within sixty (60) days, provided further that a First Mortgagee which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall, to the extent permitted by law, take back property free of any claims for unpaid assessments as provided in Section 6.7(c) herein;

(e) The Board shall at all times maintain coverage against such risks and in such amounts and containing such items sufficient to satisfy the requirements imposed from time to time by the Federal Home Loan Mortgage Corporation or the Fannie Mae under their respective condominium mortgage purchase programs;

(f) Upon request in writing, each First Mortgagee, or insurer or guarantor of a First Mortgage shall have the right:

(i) To inspect and obtain copies from the Association of the books and records of the Association and to obtain copies of this Declaration, the By-Laws and rules and regulations adopted from time to time by the Association;

(ii) To receive without charge, the annual audited or unaudited financial statement of the Association for the immediately preceding fiscal year, provided, however, that in the event audited financial statements are not available, 51% or more of the First Mortgagees (by number) shall be entitled to have such an audited statement prepared at their expense;

(iii) To receive written notice of any condemnation loss or any casualty loss which affects a material portion of the Property or Unit Ownership;

(iv) To receive written notice of any lapse, cancellation or modification of any insurance policy or fidelity bond maintained by the Association;

(v) To receive written notice of any decision by the Unit Owners to make a material amendment to this Declaration and the By-laws or the Sections of Incorporation of the Association;

(vi) To receive written notices of all meetings of the Association and to designate a representative to attend such meeting; and

(vii) To receive written notice of any action which would require the consent of a specified percentage of First Mortgagees.

(g) Upon specific written request to the Association, each First Mortgagee and insurer or guarantor of a first mortgage for a Unit, shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Elements if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00), or of any damage to a Unit in excess of One Thousand Dollars (\$1,000.00).

(h) If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then each First Mortgagee and insurer or guarantor of a First Mortgage for said Unit will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition, and no provisions of any document will entitle the Owner of a Unit or other

party to priority over such First Mortgagee with respect to the distribution to such Unit of the proceeds of any award or settlement.

(i) Whenever required, the consent of a First Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary in writing by the First Mortgagee within thirty (30) days after making the request for consent.

12.16. Obligations Concerning Unpaid Assessments and Reserves.

In a voluntary transfer of a Unit, the transferees of the Unit shall be jointly and severally liable with the transferor for all unpaid assessments against the latter up to the time of transfer, without prejudice to the transferee's right to recover from the transferor the amounts paid by the transferee therefor. However, any such transferee shall be entitled to a statement from the Board or President, or managing agent of the Association, as the case may be, setting forth the amount of the unpaid assessments against the transferor due the Association and such transferee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any such assessments which became due and payable prior to the date of the statement, in excess of the amount therein set forth. Upon transfer of the legal title to or beneficial interest in a Unit, unless there is an agreement to the contrary approved by the Board, any reserves or other funds of the transferor held by or subject to the control of the Association shall be transferred on the books of the Association to the credit of the transferee of the Unit and the transferor Unit Owner shall not be entitled to any increase in the reserve or other funds of the Association upon such sale.

12.17. Subdivision or Combination of Units.

Subject to any limitations as may be imposed by the Board, the Owner or Owners may, at their expense, subdivide or combine any Units and locate or relocate Common Elements affected or required thereby, in accordance with the provisions of this Declaration and the requirements of the Act. The Owner or Owners shall make written application to the Board, requesting an amendment to this Declaration, setting forth in the application a proposed reallocation to the new Units of the percentage interest in the Common Elements, and setting forth whether the Limited Common Elements, if any, previously assigned to the Unit to be subdivided should be assigned to each new Unit or to fewer than all of the new Units created and requesting, if desired in the event of a combination of any Units, that the new Unit be granted the exclusive right to use as a Limited Common Element, a portion of the Common Elements within the Building adjacent to the new Unit. Among other things, the Board may require that such combination or subdivision shall not affect the structural integrity of the Building and that the Owner or Owners deliver such indemnities and evidence of insurance as the Board may require. If the transaction is approved by a majority of the Board, it shall be effective upon (1) recording of an amendment to this Declaration and the Plat in accordance with the provisions of Sections 5 and 6 of the Act, and (2) execution by the Owners of the Units involved. In the event of a combination of any Units, the amendment may grant the Owner of the combined Unit the exclusive right to use, as a Limited Common Element, a portion of the Common Elements within the Building adjacent to the new Unit.

12.18. Alternate Dispute Resolution; Mediation; Arbitration.

(a) Disputes in which the matter in controversy has either no specific monetary value or a value of \$10,000 or less, other than the levying and collection of assessments, or that arises out of violation of this Declaration, the By-Laws, or rules and regulation of the Association shall be mediated or arbitrated. A dispute not required to be mediated or arbitrated that is submitted to mediation or arbitration by the agreement of the disputants is also subject to this Section.

(b) The Illinois Uniform Arbitration Act shall govern all arbitrations proceeding under this Section 12.18.

(c) The Association may require the disputants to bear the costs of mediation or arbitration.

12.19. Declarant Exculpation.

It is expressly understood and agreed by every person, firm, corporation or entity hereafter claiming any interest under this Declaration that Declarant has joined in the execution of this Declaration for the purpose of subjecting the title holding interest and the Property to the terms of this Declaration; that any and all obligations, duties, covenants and agreements of every nature herein set forth by Declarant as aforesaid to be kept or performed are intended to be kept, performed and discharged by the Unit Owners and not by Declarant personally. In the event of conflict between the terms of this Section and the remainder of this Declaration on any questions of apparent liability or obligation resting upon Declarant, the exculpatory provisions hereof shall be controlling.

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IN WITNESS WHEREOF, Declarant has caused its name to be signed to these presents as of the date first set forth above.

DECLARANT:

SEDGWICK INVESTMENTS LLC, an Illinois limited liability company

By: MK Manager Corp., an Illinois corporation, its Manager

By: \_\_\_\_\_  
F. Martin Paris, Jr., its President

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that F. Martin Paris, Jr., as President of MK Manager Corp., an Illinois corporation, the manager of Sedgwick Investments, LLC, a Delaware limited liability company (the “Company”), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of March, 2013.

\_\_\_\_\_  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

LOTS 76, 77, 78, 79, 80 AND 81, IN JOHN FITCH'S RESUBDIVISION OF BLOCK 26 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 31, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. EXCEPT THEREFROM: THE NORTH 27.14 FEET OF LOTS 76, 77, AND 78, TAKEN AS A TRACT, IN JOHN FITCH'S RESUBDIVISION OF BLOCK 26 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 31, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE NORTH 27.14 FEET OF LOTS 76, 77, AND 78, TAKEN AS A TRACT, IN JOHN FITCH'S RESUBDIVISION OF BLOCK 26 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 31, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 1611 N Hermitage, Chicago, Illinois

PIN: 14-31-429-028  
14-31-429-029  
14-31-429-030  
14-31-429-033  
14-31-429-034

EXHIBIT B

LEGAL DESCRIPTION OF COMMERCIAL PROPERTY

EXHIBIT C

PLAT

SEE ATTACHED.

EXHIBIT E

NON CONDOMINIUM RESIDENTIAL PROPERTY