

# UNOFFICIAL COPY



Doc#: 0636244012 Fee: \$108.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/28/2006 08:44 AM Pg: 1 of 43

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS,  
RESTRICTIONS AND COVENANTS OF  
LUKAS'S 412 NORTH MARION STREET**

Property Address: 412 North Marion Street, Village of Oak Park, State of Illinois, 60302

Legal Description: The North 21 Feet of Lot 10 and the South 34 Feet of Lot 11 in E. O. Gale's Subdivision of Block 4 in Kettlestring's Addition to Harlem, a Subdivision of the North part of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 16-07-102-035-1001, 16-07-102-035-1002, 16-07-102-035-1003, 16-07-102-035-1004,  
16-07-102-035-1005, 16-07-102-035-1006, 16-07-102-035-1007, 16-07-102-035-1008,  
16-07-102-035-1009 *1A,B,C 2A,B,C 3A,B,C*

Prepared by: Michael J. DeBoer, Goedert, Huntington & DeBoer, 1011 Lake Street, Suite 303,  
Oak Park, IL 60301

Return To: Michael J. DeBoer  
Goedert, Huntington & DeBoer  
1011 Lake Street, Suite 303  
Oak Park, IL 60301-1138

# UNOFFICIAL COPY

## AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS OF LUKAS'S 412 NORTH MARION STREET

This Declaration made and entered into this 29th day of September, 2006, by and among The 412 North Marion Corporation, an Illinois not-for-profit corporation and the Unit Owners of the property commonly known as 412 North Marion Street, Oak Park, Illinois:

WITNESSETH:

WHEREAS, the Declaration of Condominium Ownership And Of Easements, Restrictions and Covenants For Lukas's 412 North Marion Street dated April 6, 1967, was recorded in the office of the Recorder of Deeds for Cook County, Illinois on May 12, 1967, as Document No. 20 134 926; and

WHEREAS, the Unit Owners desire to Amend and Restate such Declaration of Condominium Ownership And Of Easements, Restrictions and Covenants For Lukas's 412 North Marion Street; and

WHEREAS, Paragraph 7 of Article 13 of the Declaration of Condominium Ownership And Of Easements, Restrictions and Covenants For Lukas's 412 North Marion Street dated April 6, 1967 provides that: The provisions of Article 3, Article 6, Section 5 of Article 6, and this paragraph 7 of Article 13 of this Declaration, may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Board, all of the owners, and all mortgagees having bona fide liens of record against any unit ownership. Other provisions of the Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification, or rescission, signed and acknowledged by the Board, the owners having at least 3/4<sup>th</sup> of the total vote and containing an affidavit by an officer of the Board certifying that a copy of the change, modification or rescission has been mailed by certified mail to all mortgagees having bona fide liens of record against any unit ownership, not less than ten (10) days prior to the date of such affidavit; and

WHEREAS, the several Unit 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 hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of the Property and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property;

NOW, THEREFORE, the Declaration of Condominium Ownership And Of Easements, Restrictions And Covenants of Lukas's 412 North Marion Street be and hereby is amended and restated as follows:

Notwithstanding anything else contained herein, the following provisions of the Declaration of Condominium Ownership And Of Easements, Restrictions and Covenants For Lukas's 412 North Marion Street dated April 6, 1967, recorded in the office of the Recorder of Deeds for Cook County, Illinois on May 12, 1967, as Document No. 20 134 926, shall remain in full force and effect:

### ARTICLE 3 COMMON ELEMENTS

3.1 Description. Except as otherwise in this Declaration provided, the common elements shall consist of all portions of the property except the units. Without limiting the generality of the foregoing, the common elements shall include the land, all stairways, elevators, halls, courtyards, lobbies, corridors, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, and such component parts of walls, floors, and ceilings as are not located within the units.

# UNOFFICIAL COPY

3.3 No Partition of Common Elements. There shall be no partition of the common elements through judicial proceedings or otherwise until this agreement is terminated and the property is withdrawn from its terms 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, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of said unit ownership as between such co-owners.

3.2 Ownership of Common Elements. Each owner shall own an undivided interest in the common elements as a tenant in common with all the other owners of the property, 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 his unit as a place of residence, 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 owners. The Developer has so determined each unit's corresponding percentage of ownership in the common elements as set forth in Exhibit "B" attached hereto.

## ARTICLE 6 ASSESSMENTS – MAINTENANCE FUND

6.1 a. Each year on or before December 1<sup>st</sup>, the Board shall 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 rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall on or before December 15<sup>th</sup> notify each owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said "estimated cash requirement" shall be assessed to the owners according to each owner's percentage of ownership in the common elements as set forth in Exhibit "B" attached hereto. On or before January 1<sup>st</sup> of the ensuing year, and the 1<sup>st</sup> of each and every month of said year, each owner shall be obligated to pay to the Board or as it may direct, 1/12<sup>th</sup> of the assessment made pursuant to this paragraph. On or before the date of the annual meeting of each calendar year, the Board shall supply to all owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each owner's percentage of ownership in the common elements to the next monthly installments due from owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each owner's percentage of ownership in the common elements to the installments due in the succeeding six months after rendering of the accounting.

b. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be charged first against such reserve. If said "estimated cash requirement" proves inadequate for any reason, including non-payment of any owner's assessment, the Board may at any time levy a further assessment, which shall be assessed to the owners according to each owner's percentage ownership in the common elements. The Board shall serve notice of such further assessment on all owners by a statement in writing giving the amount and reasons therefore, 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 owners shall be obligated to pay the adjusted monthly amount.

c. When the first Board elected hereunder takes office, it shall determine the "estimated cash requirement", as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31 of the calendar year in which said election occurs. Assessments shall be levied against the owners during said period as provided in paragraph (a) of this Article.

d. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the owner shall not constitute a waiver or release in any manner of such 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 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.

# UNOFFICIAL COPY

e. 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 an owner duly authorized in writing, at such reasonable time or times during normal business hours as may be required by the owner. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any 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 owner.

f. 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 owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed for the benefit, use and account of all the unit owners in the percentages set forth in Exhibit "B".

g. If an owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the members of the Board Managers may bring suit for and on behalf of themselves and as representative of all owners, to enforce collection thereof or to foreclose the lien therefore as hereinafter provided; and there shall be added to the amount due the costs of said suit, together with legal interest and reasonable attorneys' fees to be fixed by the Court. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided shall be and become a lien or charge against the unit ownership of the owner involved when payable and may be foreclosed by an action brought in the names of the Board of Managers as in the case of foreclosure of liens against real estate. Said lien shall take effect and be in force when and as provided in the "Condominium Property Act" of Illinois; provided, however, that encumbrances owned or held by any bank, insurance company or savings and loan association shall be subject as to priority after written notice to said encumbrancer of unpaid common expenses only to the lien of all common expenses on the encumbered unit which become due and payable subsequent to the date said encumbrancer either takes possession of the unit, accepts a conveyance of any interest therein, or has a receiver appointed in a suit to foreclose his lien. 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.

h. Amendments to this Article VI shall only be effective upon unanimous written consent of the owners, and their Mortgagees. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuser of the common elements or abandonment of his or her unit.

## ARTICLE 8 SALE, LEASING OR OTHER ALTERATION

Section 5 Consent of Voting Members. The Board shall not exercise any option hereinabove set forth to purchase any unit ownership or interest therein without the prior written consent of all of the voting members except the members whose unit or units are the subject of the option. The members of the Board or their duly authorized representatives, acting on behalf of the other unit owners, may bid to purchase at any sale of a unit ownership or interest therein, which said sale is held pursuant to an order or direction of a court, upon the prior unanimous written consent of the voting members whose units are not subject to the sale, which said consent shall set forth a maximum price which the members of the Board or their duly authorized representatives are authorized to bid and pay for said unit or interest therein.

## ARTICLE 13 GENERAL PROVISIONS

Paragraph 7 The provisions of Article 3, Article 6, Section 5 of Article 8, and this paragraph 7 of Article 13 of this Declaration, may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Board, all of the owners and all mortgagees having bona fide liens of record against any unit ownership. Other provisions of the Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification, or rescission, signed and

# UNOFFICIAL COPY

acknowledged by the Board, the owners having at least 3/4<sup>th</sup> of the total vote and containing an affidavit by an officer of the Board certifying that a copy of the change, modification or rescission has been mailed by certified mail to all mortgagees having bona fide liens of record against any unit ownership, not less than ten (10) days prior to the date of such affidavit. The change, modification or rescission shall be effective upon recordation of such instrument in the Office of the Recorder of Deeds of Cook County, Illinois; provided, however, that no provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the "Condominium Property Act".

If a contrary result would apply to the above provisions by a definition contained below, then the applicable definition from the original Declaration shall apply.

The following provisions are new, and shall apply wherever not in conflict with the above Article 3, Article 6, Section 5 of Article 8, and paragraph 7 of Article 13 of the Declaration of Condominium Ownership And Of Easements, Restrictions and Covenants For Lukas's 412 North Marion Street dated April 6, 1967, recorded in the office of the Recorder of Deeds for Cook County, Illinois on May 12, 1967, as Document No. 20 134 926:

1. Definitions. Certain words and terms used in this Declaration are defined as follows:
  - a. Act - The Condominium Property Act of the State of Illinois, as amended from time to time.
  - b. Association - The Association of all the Unit Owners acting pursuant to the Bylaws attached hereto as Exhibit C, through its duly elected Board.
  - c. Board - The board of managers of the Association as constituted at any time and from time to time. In the event the Association is incorporated, the "Board" shall mean the Board of Directors of the incorporated Association.
  - d. Buildings - All structures, attached or unattached, located on the Property, containing one or more Units.
  - e. Bylaws - The Bylaws of the Association, which are attached hereto as Exhibit C.
  - f. Common Elements - All portions of the Property except the Units, including, without limiting the generality of the foregoing, the Parcel, stairways, elevators, halls, courtyards, lobbies, corridors, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, and such component parts of walls, floors, and ceilings as are not located within the units, roof, storage areas, laundries, mechanical rooms and equipment therein, refuse collection system, central heating system, and structural parts of the improvements on the Parcel, wherever located.
  - g. Common Expenses - The proposed or actual expenses affecting the Property, including Reserves, if any, lawfully assessed by the Board.
  - h. Condominium Instruments - All documents and authorized amendments thereto recorded pursuant to the provisions of the Act, including the Declaration, Bylaws, and Plat.
  - i. First Mortgagee - An owner of a bona fide first mortgage or first trust deed covering any portion of the Property.
  - j. Limited Common Elements - That part of the Common Elements contiguous to and serving a single Unit exclusively as an inseparable appurtenance thereto, including specifically such portions of the perimeter walls, floors and ceilings, windows and doors, and all fixtures and structures therein that lie outside the Unit boundaries, pipes, ducts, flues, shafts, electrical wiring or conduits, or other system or component part thereof that serve a Unit exclusively to the extent such system or component part is located outside the boundaries of a Unit
  - k. Maintenance Fund - All money collected or received by the Association pursuant to the provisions of the Condominium Instruments.
  - l. Majority or Majority of Unit Owners - The owners of more than 50 percent in the aggregate in interest of the undivided ownership of the Common Elements. Any specified percentage of the Unit Owners means

# UNOFFICIAL COPY

- such percentage in the aggregate in interest of such undivided ownership.
- m. Occupant - A person or persons, other than a Unit Owner, in possession of a Unit
  - n. Parcel - The lot or lots or tract or tracts of land, described in Paragraph 2 hereof, submitted to the provisions of the Act.
  - o. Person - A natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.
  - p. Plat - A plat or plats of survey of the Parcel and of all Units in the Property submitted to the provisions of the Act, which shall consist of the three-dimensional, horizontal, and vertical delineation of all such Units and such other data as may be required by the Act.
  - q. Property - All land, property, and space comprising the Parcel, all improvements and structures erected, constructed, or contained therein or thereon, including the Building and all easements, rights, and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit, and enjoyment of the Unit Owners, submitted to the provisions of the Act.
  - r. Record; Recordation; Recording; Recorded - To record or have recorded in the Recorder's Office of Cook County, Illinois.
  - s. Reserves - Those sums paid by Unit Owners that are separately maintained by the Board for purposes specified by the Board or the Condominium Instruments.
  - t. Unit - Any part of the Property designed and intended for any type of independent use and designated on the Plat as a Unit.
  - u. Unit Owner - The Person or Persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit and its appurtenant undivided ownership interest in the Common Elements.
2. Legal Description of Parcel. The Parcel hereby submitted to the provisions of the Act is legally described as follows:

Real estate located at the address commonly known as 412 North Marion Street, in the Village of Oak Park, County of Cook, and State of Illinois:

The North 21 Feet of Lot 10 and the South 34 Feet of Lot 11 in E. C. Gale's Subdivision of Block 4 in Kettlestring's Addition to Harlem, a Subdivision of the North part of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois;

and together with all rights acquired under a certain easement agreement recorded in Cook County, Illinois, as document 19974246.

3. Description of Units. All units are delineated on the Plat attached to the Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Lukas's 412 North Marion Street, recorded in the office of the Recorder of Deeds for Cook County, Illinois, as Document No. 20 134 926, and made a part of this Declaration. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on the Plat. Said Units are legally described on Exhibit A attached to the Declaration of Condominium Ownership And Of Easements, Restrictions and Covenants For Lukas's 412 North Marion Street dated April 6, 1967, recorded in the office of the Recorder of Deeds for Cook County, Illinois as Document No. 20 134 926 and made a part hereof by this reference.

4. Use and Ownership of the Common Elements

The Use and Ownership of the Common Elements is addressed above in Article 3 of the Declaration of Condominium Ownership And Of Easements, Restrictions and Covenants For Lukas's 412 North Marion Street

# UNOFFICIAL COPY

dated April 6, 1967, recorded in the office of the Recorder of Deeds for Cook County, Illinois on May 12, 1967, as Document No. 20 134 926.

## 5. Encroachments and Easements.

- a. Balconies. A valid exclusive easement is hereby declared and established for the benefit of each unit and its owner, consisting of the right to use and occupy the balcony adjoining the unit; provided, however, that no owner shall decorate, landscape or adorn such balcony in any manner contrary to such rules and regulations as may be established by the Board of Managers or the Association, as hereinafter provided, unless he shall first obtain the written consent of the Board or Associates so to do.
- b. If any part of the Common Elements encroaches or shall hereafter encroach on any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach on any part of the Common Elements, or any portion of any Unit encroaches on any part of any other Unit as a result of the construction, repair, reconstruction, settlement, or shifting of the Building, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of (1) the Unit Owner of the Unit so encroaching, or (2) all the Unit Owners with respect to the Common Elements so encroaching as long as all or any part of the Building containing such Unit or Common Elements so encroaching shall remain standing; provided however, that after the date this Declaration is Recorded, a valid easement for an encroachment shall in no event be created in favor of any owner of a Unit or in favor of the owners of the Common Elements if such encroachment occurred due to the willful conduct of said owner or owners.
- c. The Village of Oak Park, AT&T Inc., Commonwealth Edison Company, Nicor Gas Company, and all other providers of public utility services serving the Property, and any Person providing cable television or other similar entertainment to the Property, are hereby granted the right to lay, construct, renew, replace, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus, and other equipment related to their service to the Property, into and through the Common Elements and the Units, where reasonably necessary, for the purposes of providing utility and entertainment services to the Property, as long as such grantees repair any damage to the Property resulting from an exercise of their rights hereunder. Subject to the terms of Paragraph 5(c), the Developer or Association may hereafter grant other or additional easements for utility or entertainment purposes and for any other purposes including, but not limited to, such easements as may be required to construct, keep, and maintain improvements on the Common Elements for the benefit of the Property, over, under, along, and on any portion of said Common Elements, and each Unit Owner hereby grants the Developer and the Association an irrevocable power of attorney to execute, acknowledge, and record for and in the name of such Unit Owner such instruments as may be necessary to effectuate the foregoing (provided that with respect to all easements granted hereby or pursuant hereto, no Unit Owner shall be deprived of, or be subjected to material interference with, the use of its Unit or any Limited Common Element appurtenant to its Unit, other than reasonably). Each mortgagee of a Unit shall be deemed to consent to and be subordinate to any easement hereafter granted pursuant to the provisions of this Subparagraph 5(b) and also grants such power of attorney to the Developer and the Association necessary to effectuate the foregoing.
- d. Upon approval by at least six (6) Unit Owners, portions of the Common Elements may be dedicated to a public body for purposes of streets or utilities. Where such a dedication is made, nothing in the Act or any other law shall be construed to require that the real property taxes of every Unit must be paid prior to Recordation of the dedication. Upon approval by a Majority of the Unit Owners, an easement may be granted for the laying, maintenance, and repair of cable television cable. Upon approval by a Majority of the Unit Owners, an easement may be granted to a governmental body for construction, maintenance, and repair of a project for protection against water damage or erosion. Any action pursuant to this Subparagraph 5(c) must be taken at a meeting of Unit Owners duly called for the purpose.
- e. A blanket easement over the Property is hereby granted in favor of the Association for the purpose of exercising its rights and performing its duties under this Declaration. The authorized representatives of the Association or the Board, or of the manager or managing agent for the Property, and any suppliers of water, utility, or cable television or similar entertainment services to the Property shall be entitled to reasonable access to, over, and through the individual Units as may be required in connection with the operation,

# UNOFFICIAL COPY

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, or to service and take readings of any utility meters located within a Unit.

6. Pipes, etc. All pipes, wires, ducts, flues, chutes, conduits, public utility lines (to the outlets), and structural components located in or running through a Unit and serving more than one Unit or another Unit or serving, or extending into, the Common Elements, or any part thereof, shall be deemed part of the Common Elements but shall not be deemed to be Limited Common Elements. No Unit Owner may take any action that would interfere with the ability of the Association to repair, replace, or maintain said Common Elements as provided herein.

## 7. Sale or Other Alienation

a. Any Unit Owner who desires to sell his or her Unit, or any interest therein, to any Person shall first obtain from the proposed purchaser a bona fide executed offer in writing, setting forth all the terms and conditions of said proposed transaction. The offer shall be expressly subject to the terms of this Paragraph 7. If any Unit Owner receives such an offer that he or she intends to accept, he or she shall accept such offer subject to the terms of this Paragraph 7 and give written notice to the Association of such offer and acceptance, stating the name and address of such proposed purchaser, the terms of the proposed transaction, and such other information as the Association may reasonably require, and shall furnish a copy of such executed offer and acceptance to the Association. The giving of such notice shall constitute a warranty and representation by the giver thereof that he or she believes such offer and all information contained in the notice to be bona fide, true, and correct in all respects. During the period of thirty (30) days following receipt by the Association of such written notice, the Association shall have the first right and option to purchase such Unit (or to cause the same to be purchased by any designee or assignee, corporate or otherwise, of the Association) on the same terms and conditions as stated in the aforesaid notice received by the Association. If the Association shall give written notice to the Unit Owner within said thirty (30) day period of the exercise of its first right and option, the transaction between the Unit Owner and the Association or its designee shall be consummated on the same terms as set forth in the notice to the Association.

If the Association shall give written notice to the Unit Owner within said thirty (30) day period that it has elected not to exercise such first right and option, or if the Association shall fail to give any notice within said thirty (30) day period, then the proposed transaction as described and set forth in the notice to the Association may be consummated within ninety (90) days after the expiration of said thirty (30) day period. If the Unit Owner fails to consummate such transaction within such ninety (90) day period, then such Unit and all rights with respect thereto shall again become subject to the first right and option of the Association as herein provided.

b. Any Unit Owner who wishes to make a gift of his or her Unit, or any interest therein, or who wishes to transfer his or her Unit, or any interest therein, for a consideration other than cash or notes (secured or unsecured) of such transferee or the assumption of an existing indebtedness, to any person or persons who would not be heirs at law of the Unit Owner under the rules of descent of the State of Illinois were he or she to die within sixty (60) days before the contemplated date of such gift or other transfer, shall give to the Association notice of his or her intent to make such gift or other transfer not less than sixty (60) days before the contemplated date thereof. Said notice shall state the contemplated date of such gift or other transfer, the intended donee or transferee, and the terms in detail of such proposed other transfer and such other information as the Association may reasonably require. The Association shall have the first right and option to purchase the Unit or interest therein (or to cause it to be purchased by any designee or assignee, corporate or otherwise, of the Association) for cash at fair market value, which shall be determined by arbitration as hereinafter provided in Paragraph 7d.

c. In the event that any Unit Owner dies, leaving a will devising his or her Unit, or any interest therein, to any Person or Persons not heirs at law of the deceased Unit Owner under the rules of descent of the State of Illinois, and the will is admitted to probate, the Association shall have the first right and option to purchase the Unit or interest therein (or to cause it to be purchased by any designee or assignee, corporate or otherwise, of the Association) from the estate of the deceased Unit Owner, or from the devisee or devisees named in such will if no power of sale is conferred by the will on the personal representative named



# UNOFFICIAL COPY

therein, for cash at fair market value, which shall be determined by arbitration as hereinafter provided in Paragraph 7d.

- d. Within thirty (30) days after the appointment of a personal representative for the estate of the deceased Unit Owner, or the receipt by the Association of the written notice referred to in Paragraph 7b, as the case may be, the Association, on the one hand, and the owner of the Unit to be purchased, or the devisee or devisees or personal representative, as the case may be, on the other hand, shall each appoint a qualified real estate appraiser to act as an arbitrator and shall give written notice of such appointment to the other party to the arbitration. If either party fails to appoint an arbitrator, the arbitrator appointed by the one party shall act as sole arbitrator. If each party has so appointed an arbitrator, then within ten (10) days after the appointment of the last to be appointed of said arbitrators, the two arbitrators so appointed shall appoint another qualified real estate appraiser to act as the third arbitrator. If the two arbitrators so appointed fail to agree on a third arbitrator, then such third arbitrator shall be appointed by the American Arbitration Association on application of either party to the arbitration. Within fifteen (15) days after the appointment of a third arbitrator, the three arbitrators shall determine the fair market value of the Unit or interest therein and shall thereupon give written notice of such determination to the Association and the owner or the devisee or devisees or personal representative, as the case may be. If the three arbitrators fail to agree on a fair market value, then the mean average of the values fixed by these three arbitrators shall be the fair market value. The Association's right to purchase the Unit or interest therein at the price so determined shall expire sixty (60) days after the date of receipt of notice of such fair market value; provided, however, that such first right and option to purchase shall expire seven (7) months after the appointment of a personal representative of a deceased Unit Owner who is not empowered to sell. The Association shall be deemed to have exercised its first right and option if it tenders the required sum of money to the owner, or the devisee or devisees or the personal representative, as the case may be, within the option period.
- e. In the event any Unit or interest therein is sold at a judicial or execution sale (other than a mortgage foreclosure sale), the Person acquiring title through such sale shall, before taking possession of the Unit so sold, give thirty (30) days' written notice to the Association of his or her intention so to do, whereupon the Association shall have the first right and option to purchase such Unit or interest therein at the same price for which it was sold at the sale. If this first right and option is not exercised by the Association within the thirty (30) days after receipt of such notice, the option shall thereon expire, and the purchaser may thereafter take possession of the Unit. The Association shall be deemed to have exercised its first right and option if it tenders the required sum of money to the purchaser within the thirty (30) day period.
- f. In the event any Unit Owner shall default in the payment of any money required to be paid under the provisions of any mortgage or trust deed against his or her Unit, the Association shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereon have a lien therefor against such Unit, which lien may be perfected and foreclosed in the manner provided in §9 of the Act with respect to liens for failure to pay a share of the common expenses.
- g. It is the intent that the Unit Owners shall occupy and use each Unit as a private residential dwelling for himself or herself and his or her immediate family, and for no other purpose including business purposes. Therefore, the leasing of Units, parking spaces and storage spaces to others for residential dwelling, business, speculative, investment or other similar purposes is not permitted.
- h. The Association shall not exercise any option set forth above without the prior written consent of Unit Owners, as provided above in Section 5 of Article 8 of the Declaration of Condominium Ownership And Of Easements, Restrictions and Covenants For Lukas's 412 North Marion Street dated April 6, 1967, recorded in the office of the Recorder of Deeds for Cook County, Illinois on May 12, 1967, as Document No. 20 134 926.
- i. When title to any Unit is held by a trust, the bequest, assignment, sale, conveyance, or other transfer by a beneficiary of such trust of his or her beneficial interest in such trust (other than as security for a bona fide indebtedness) shall be deemed a devise of the Unit owned by the trust.
- j. When title to any Unit is held by a corporation or a partnership, or when a corporation or a partnership is beneficiary of a trust in title to a Unit, the transfer or bequest of fifty percent (50%) or more of the issued

# UNOFFICIAL COPY

- and outstanding shares of such corporation, or fifty percent (50%) or more of the interest in such partnership, shall be deemed a devise of the Unit owned by the corporation, partnership, or trust.
- k. The terms of this Paragraph 7 and the first right and option herein provided for shall not be applicable to:
- (1) the transfer or conveyance, by operation of law or otherwise, of the interest of a co-owner of any Unit, to any other co-owner of the same Unit, or the interest of a co-owner of the beneficial interest in a land trust holding title to a Unit to any other co-owner of such beneficial interest, when such co-owners hold title to such Unit or such beneficial interest as tenants in common or as joint tenants;
  - (2) the transfer by sale, gift, devise, or otherwise of any Unit or interest therein, or beneficial interest of a land trust holding title to a Unit to or for the sole benefit of any spouse, descendant, ancestor, or sibling (or the spouse of any such person) of the transferor;
  - (3) the execution of a bona fide trust deed, mortgage, or other security instrument; and,
  - (4) the sale or conveyance of a Unit by the holder of a mortgage or trust deed who has acquired title to such Unit by deed in lieu of foreclosure or foreclosure of a mortgage or trust deed on the Property, or any Unit, or by any other remedy set forth in the mortgage or trust deed, provided such holder is a bank, savings and loan association, insurance company, or like institutional mortgagee.
- l. Acquisition of Units or interests therein under the provisions of this paragraph shall be made from the Maintenance Fund. If said fund is insufficient, the Association shall levy a special assessment against each Unit Owner other than the owner of the Unit that is to be acquired by the Association in the ratio that his or her percentage of ownership in the Common Elements bears to the total of such percentages applicable to Units subject to the special assessment, which assessment shall become a lien and may be perfected and foreclosed in the manner provided in § 9 of the Act with respect to liens for failure to pay a share of the Common Expenses. Subject to the provisions of the Act and Bylaws, the Association may borrow money to finance the acquisition of Units or interest therein, which acquisition is authorized by this paragraph; provided, however, that no financing may be secured by an encumbrance or hypothecation of any portion of the Property other than the Unit or interest therein to be acquired.
- m. Units or interests therein acquired pursuant to the terms of this paragraph, and all proceeds of any sale thereof, shall be held of record in the name of the Association for the use and benefit of the Unit Owners in the same proportions that the Association could levy a special assessment under the terms of Paragraph 7.1. above. Subject to the provisions of the Act and Bylaws, these Units or interests therein shall be sold by the Association for the benefit of such Unit Owners at such price and on such terms as the Association shall determine.
- n. Upon the written consent of all the members of the Board, any of the rights or options contained in this Paragraph 7 may be released or waived, and the Unit or interest therein that is subject to the right and option of the Association set forth in this paragraph may be sold, conveyed, given, or devised free and clear of the provisions of this paragraph.
- o. Upon the written request of any prospective transferor, purchaser, tenant, or mortgagee of a Unit, the Association, by its Secretary, shall issue a written and acknowledged certificate evidencing:
- (1) that the provisions of this Paragraph 7 have been complied with or duly waived by the Association and that the first right and option of the Association has been terminated, if such is the fact; and
  - (2) that any conveyance or deed is, by the terms hereof, not subject to the provisions of this Paragraph 7, if such is the fact; and such a certificate shall be conclusive evidence of the facts contained therein.
8. Association.
- a. The Association may cause the formation of an Illinois not-for-profit corporation for the purpose of facilitating the administration and operation of the Property and to act as the Association.
  - b. Whether or not the Association is incorporated,

# UNOFFICIAL COPY

- (1) each Unit Owner shall be a member of such Association, which membership shall terminate on the sale or other disposition by such member of his or her Unit, at which time the new Unit Owner shall automatically become a member therein;
  - (2) the provisions of Exhibit C of this Declaration shall be adopted as the Bylaws of such Association;
  - (3) the name of such Association shall be The 412 North Marion Corporation, or a similar name.
9. Insurance, Repair, and Reconstruction.
- a. The Association shall acquire and pay for, out of the Maintenance Fund herein provided, the following:

- (1) Such insurance as the Association is required to obtain under the provisions of the Act and such other insurance as the Association deems advisable in the operation and for the protection of the Common Elements and the Units. The Association shall also comply with the insurance requirements of the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the U.S. Department of Housing and Urban Development (HUD), the Federal Housing Authority (FHA), or the Veterans Administration (VA), to the extent that (a) such agency is a mortgagee, assignee of a mortgagee, or an insurer or guarantor of a first mortgage with respect to any Unit and the Association is so notified thereof; and (b) such agency's requirements do not conflict with those contained in the Act. Any losses under such policies of insurance shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed, in accordance with the provisions of this Declaration and the Act.

The Association may engage the services of any bank or trust company authorized to do business in Illinois to act as trustee or agent on behalf of the Association for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, on such terms as the Association shall determine consistent with the provisions of this Declaration. In the event of any loss resulting from the destruction of the major portion of one or more Units, the Association shall engage a corporate trustee as aforesaid on the written demand of the mortgagee or owner of any Unit so destroyed. The fees of such corporate trustee shall be Common Expenses.

Each Unit Owner, other than the Trustee, shall notify the Association in writing of any additions, alterations, or improvements to his or her Unit, and he or she shall be responsible for any deficiency in any insurance loss recovery resulting from his or her failure so to notify the Association. The Association shall use its reasonable efforts to obtain insurance on any such additions, alterations, or improvements, if such Unit Owner requests it to do so, and if such Unit Owner shall make arrangements satisfactory to the Association to reimburse it for any additional premiums attributable thereto; and in the absence of insurance on such additions, alterations, or improvements, the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing before the making of such additions, alterations, or improvements. All such policies of insurance shall contain standard mortgagee clause endorsements in favor of the first mortgagee of each Unit and shall provide that such policies shall not be terminated, canceled, or substantially modified without at least thirty (30) days prior written notice to the mortgagee of each Unit.

- (2) Comprehensive public liability and property damage insurance in such limits as the Association shall deem desirable, provided that such limits shall not be less than One Million Dollars (\$1,000,000) per occurrence, for personal injury and/or property damage insuring the Association, the members of the Board, the managing agent, if any, and their respective agents and employees, and the Unit Owners from any liability in connection with the property.
- (3) Such other forms of insurance as the Association shall elect to effect, including such Workers' Compensation insurance as may be necessary to comply with applicable laws.
- (4) Fiduciary insurance coverage to protect against dishonest acts on the part of all officers, employees, or other Persons who either handle or are responsible for funds held or administered by the Association, if such insurance is mandated by law or if the Association shall elect to effect it. Such insurance coverage shall name the Association as an insured or obligee and shall be in an amount at least equal to the maximum amount of funds that will be in the custody of the Association plus Reserves.

# UNOFFICIAL COPY

- (5) In the event FHLMC, FNMA, HUD, FHA, or VA is a mortgagee, an assignee of a mortgagee, or an insurer or guarantor of a first mortgage with respect to any Unit, and the Association is so notified, a fidelity bond or bonds (or insurance coverage if acceptable to such of FHLMC, FNMA, HUD, FHA, or VA as are then a mortgagee or an assignee of a mortgagee) to protect against dishonest acts on the part of the officers, directors, trustees, and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. Such bond or bonds shall name the Association as an obligee and shall be in an amount at least equal to 150% of the estimated annual Common Expenses, including Reserves, unless a higher amount is required by FHLMC, FNMA, HUD, FHA, or VA, in which case the bond or bonds shall be in the higher amount. Such bond or bonds shall contain a waiver of defense based on the exclusion of persons who serve without compensation from the definition of "employee."
- b. Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Association, and the cost of any appraisal the Association deems advisable in connection with any insurance, shall be Common Expenses.
- c. The Association shall secure insurance policies that will provide for the following:
- (1) with respect to the insurance provided for in Paragraph 9a(2) above, coverage of cross liability claims of one insured against another; and
  - (2) a waiver of any rights to subrogation by the insuring company against any named insured.
- d. The Association may, but shall not be required to, secure policies providing the following:
- (1) with respect to the insurance provided for in Paragraph 9a(1) above, that the policy cannot be cancelled, invalidated, or suspended on account of the conduct of any one or more individual Unit Owners;
  - (2) with respect to the insurance provided for in Paragraph 9a(1) above, that the insurer shall not have the option to restore the Property if the Property is sold or removed from the provisions of the Act.
- e. Each Unit Owner shall be responsible for insurance coverage on the furnishings and other items of personal property belonging to a Unit Owner and insurance for his or her personal liability to the extent not covered by insurance maintained by the Association.
- f. Upon the cancellation of any policy of insurance that the Association is required to obtain hereunder, the Association shall notify each party insured thereunder of such cancellation.
- g. In the event of fire or other disaster, the insurance proceeds, if sufficient to reconstruct the Building, shall be applied to restore the Building to substantially the same condition in which it existed before the fire or other disaster, with each Unit and the Common Elements to have the same vertical and horizontal boundaries as before the fire or other disaster.
- h. If, in the event of fire or other disaster, the insurance proceeds are insufficient to restore the Building as set forth in Paragraph 9g above, then the following shall apply:
- (1) The Board shall call a meeting of Unit Owners to be held not later than the first to occur of
    - (a) the expiration of thirty (30) days after the final adjustments of the insurance claims or
    - (b) the expiration of ninety (90) days after the fire or other disaster that caused the damage.
  - (2) At such meeting, the Board shall present an estimate of the cost of repair or reconstruction, together with an estimate of the part thereof that must be raised by way of special assessment.
  - (3) The Building shall be restored and the proposed special assessment shall be levied only on the vote of at least 75 percent of the Unit Owners.
  - (4) If the Unit Owners do not vote to restore the Building at the meeting provided for in Paragraph 9h(1) above, then the Board may, at its discretion, call another meeting or meetings of Unit Owners to reconsider

# UNOFFICIAL COPY

the question. If 75% or more of the Unit Owners do not vote to restore the Building within 180 days after the fire or other disaster, then the Board may (but shall not be required to) Record a notice as permitted under the Act.

(5) If the Unit Owners do not vote to restore the Building under the provisions of Paragraph 9h(4) above, and the Board does not Record a notice as permitted under the Act, then the Unit Owners may, with the consent of all First Mortgagees, withdraw any portion of the Building so affected by such fire or other disaster from the Act. Upon the withdrawal of any Unit or portion thereof, the percentage of interest in the Common Elements appurtenant to such Unit shall be reallocated among the remaining Units on the basis of the relative percentage interest of the remaining Units. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, on the basis of diminution of the market value of the Unit, as determined by the Board. The allocation of any insurance or other proceeds to any withdrawing or remaining Unit Owners shall be on an equitable basis, which need not be a Unit's percentage of interest in the Common Elements. 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 Owners percentage of interest in the Common Elements. Any such proceeds available from the withdrawal of Limited Common Elements shall be distributed in accordance with the interests of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof so withdrawn shall cease or shall be equitably reduced.

10. Separate Real Estate Taxes. It is understood that real estate taxes for the Parcel are to be separately taxed to each Unit Owner for his or her Unit and its corresponding percentage of ownership of the Common Elements, as provided in the Act.

11. Use and Occupancy of Units and Common Elements. The Units and Common Elements shall be occupied and used as follows:

- a. No part of the Property shall be used for other than housing and the related common purposes for which the Property was designed. Each Unit, or any two or more adjoining 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 purposes. That part of the Common Elements separating any two or more adjoining Units used together may be altered to afford ingress and egress to and from such adjoining units in accordance with the rules and regulations of the Association and on such conditions as shall reasonably be determined by the Association, provided that a Unit Owner intending to so alter the Common Elements as aforesaid shall notify the Association at least forty-five (45) days before the commencement of any such alteration.
- b. No industry, business, trade, occupation, or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Property. No "For Sale" signs, advertising, or other displays shall be maintained or permitted on any part of the Property except at such location and in such form as shall be determined by the Association. The right is reserved by the Trustee or his or her agent or agents to place "For Sale" signs on any unsold or unoccupied Units and on any part of the Common Elements, and the right is hereby given to any mortgagee who may become the owner of any Unit to place such signs on any Unit owned by such mortgagee. Subject to the limitations of Paragraphs 5d and 5e, the Trustee shall be entitled to access, ingress, and egress to the Property as they shall deem necessary in connection with the sale of, or work in, the Building or any Unit. The Trustee shall have the right to use any unsold Unit or Units as a model apartment or for sales or display purposes, to relocate the same from time to time, and to maintain on the Property, until the sale of the last Unit, all models, sales offices, and advertising signs or banners, if any, and lighting in connection therewith.
- c. There shall be no obstruction of the Common Elements, nor shall anything be stored in the Common Elements without the prior consent of the Association, except as herein expressly provided. Each Unit Owner shall be obligated to maintain and keep his or her own Unit and the Limited Common Elements appurtenant thereto in good, clean order and repair. The use and the covering of the interior surfaces of 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 Association.

# UNOFFICIAL COPY

- d. Nothing shall be done or kept in any Unit or in the Common Elements that will increase the rate of insurance on the Property without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements that will result in the cancellation of any insurance maintained by the Association, or that would be in violation of any law. No waste shall be committed in the Common Elements.
- e. 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, or radio, or television, or other antenna (except as installed as of the date this Declaration is recorded or except as thereafter installed by the Association, and except as may be permitted by the Telecommunications Act of 1996 or any similar such law which permits, among other things, the installation of certain Over-the-Air Reception Devices and customer-end antennas that receive and transmit fixed wireless signals) shall be affixed to or placed on the exterior walls or roof or any part thereof or on the Common Elements without the prior written consent of the Association. All through-wall air conditioners and sleeves in which said air conditioners are inserted, installed as of the date this Declaration is Recorded, may be maintained, removed, and replaced, and shall be repaired as necessary by the Unit Owner owning the Unit that such air conditioner and sleeve serve. No air conditioning unit of whatever type, other than those installed as of the date this Declaration is Recorded, or those thereafter installed by the Association, may be installed without the prior written permission of the Association.
- f. No animals, 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 Units, subject to rules and regulations adopted by the Association, which rule or regulation may exclude any kind of pet by type or category, provided that permitted household pets are not kept, bred, or maintained for any commercial purpose; and provided further that any such authorized pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property on three (3) days' written notice from the Association.
- g. 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, that may be or become an annoyance or nuisance to the other Unit Owners or occupants.
- h. Except as constructed or altered by or with the permission of the Association, nothing shall be done in any Unit or in, on, or to the Common Elements that would impair the structural integrity, safety, or soundness of the Building, or that would structurally change the Building.
- i. No clothes, sheets, blankets, laundry, or other articles of any kind shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris, and other unsightly materials.
- j. No benches, chairs, or other personal property shall be left on, nor shall any playing, lounging, or parking of baby carriages, playpens, bicycles, wagons, toys, or vehicles be permitted on, any part of the Common Elements without prior consent of and subject to any rules and regulations of the Association.
- k. Nothing shall be altered or constructed in or removed from the Common Elements except by or with the permission of the Association.
- l. Each Unit Owner and the Association hereby waive and release any and all claims he or she or it may have against any other Unit Owner, the Association, members of the Board, the Trustee, the beneficiaries of the Trustee, and their respective employees and agents for damage to the Common Elements, the Units, or any personal property located in the Units or Common Elements caused by fire or other casualty or any act or omission referred to in Paragraph 11. m., to the extent that such damage is covered by fire or other form of hazard insurance.
- m. If the act or omission of a Unit Owner, or of a member of his or her family, a household pet, a guest, an occupant, or a visitor of such Unit Owner, shall cause damage to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs, or replacements shall be required that would otherwise be at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs,

# UNOFFICIAL COPY

- and replacements, as may be determined by the Association, to the extent such payment is not waived or released under the provisions of Paragraph 11. 1.
- n. Any release or waiver referred to in Paragraphs 11. 1. and 11. m. hereof shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder.
  - o. 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 Association, an unreasonable disturbance to others. Nor shall any Unit Owner connect any machine, appliance, accessory, or equipment to the heating system or plumbing system without the prior written consent of the Association.
  - p. This Paragraph 11 shall not be construed to prevent or prohibit a Unit Owner from maintaining his or her personal professional library, keeping his or her personal business or professional records or accounts, handling his or her personal business or professional telephone calls, or conferring with business or professional associates, clients, or customers in his or her Unit.
  - q. If required by the Arbitration, each Unit Owner shall deposit with the Board duplicate keys for all locks required for entry to his or her Unit, as well as security codes for all alarm systems relating to entry to his or her Unit.
  - r. Except as otherwise expressly provided in the Declaration of Condominium or Bylaws, no additions, alterations, or improvements shall be made by a Unit Owner to any part of the Common Elements (including the Limited Common Elements) and no additions, alterations, or improvements shall be made by a Unit Owner to his or her Unit, where such work alters the wall or partition, configuration, ceiling, perimeter doors or windows, or floor load or otherwise affects the structure of the Unit or the structural integrity or systems of the Building, or increases the cost of insurance required to be carried by the Board hereunder, without prior written consent of the Board, and then only in accordance with rules and regulations adopted by the Board. Any addition, alteration, or improvement of a Unit by the Unit Owner that shall affect the structure of the Unit or the Common Elements or shall affect the structural integrity of the Building shall, further, conform with all documentation prepared or reviewed and approved by an architectural or engineering firm selected by the Association. The cost of such drawings or review and approval shall be paid by the Unit Owner. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration, or improvement by a Unit Owner on the Unit Owner's agreement either (1) to be solely responsible for the maintenance of such addition, alteration, or improvement, subject to such standards as the Board may from time to time set, or (2) to pay to the Association from time to time the additional costs of maintenance or insurance as a result of the addition, alteration, or improvement. If an addition, alteration, or improvement is made by a Unit Owner without the prior written consent of the Board, then the Board may, in its discretion, take any of the following actions, which actions shall not be exclusive of the remedies available to the Board under Paragraph 12 hereof:
    - (1) Require the Unit Owner to remove the addition, alteration, or improvement and restore the Property to its original condition, all at the Unit Owner's expense, or
    - (2) If the Unit Owner refuses or fails to properly perform the work required under clause (1) above, the Board may cause the work to be done and may charge the Unit Owner for the cost thereof as determined by the Board; or
    - (3) Ratify the action taken by the Unit Owner, and the Board may (but shall not be obligated to) condition such ratification on the same conditions that it may impose on the giving of its prior consent under this subparagraph.
12. Violation of Declaration. The violation of any rule or regulation adopted by the Association or the breach of any covenant or provision herein or in the Bylaws contained shall, in addition to any other rights provided for in this Declaration or the Bylaws, give the Association the right (a) to enter on the Unit or any portion of the Property on 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 neither the Association, nor the officers, employees, or agents thereof, shall thereby be

# UNOFFICIAL COPY

deemed guilty in any manner of trespass; or (b) to enjoin, abate, or remedy by appropriate legal proceedings, 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.

Provided, however, that, except in cases of emergency when damage to persons or property is threatened, the Association shall not take any such action unless (a) it has first given the Unit Owner alleged to have violated any restriction, condition, or regulation adopted by the Association, or to be in breach of any covenant or provision herein or in the Bylaws contained, a hearing on such allegations pursuant to rules and regulations adopted by the Association; (b) the Association shall have determined such allegations to be true; and (c) the Unit Owner shall not have desisted from such violation or breach or shall not have taken such steps as shall be necessary to correct such violation or breach within such reasonable period of time as determined by the Association and communicated to the Unit Owner. Any and all costs and expenses incurred by the Association in the exercise of its authority, as granted in this Paragraph 12, including but not limited to court costs, reasonable attorneys' fees as determined by a court of competent jurisdiction, and cost of labor and materials, shall be paid by the Unit Owner in violation and, until paid by such Unit Owner, shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in §9 of the Act with respect to liens for failure to pay a share of the Common Expenses. Any such lien shall be junior and subordinated to the lien of a First Mortgagee with respect to such Unit.

Furthermore, if, after hearing and finding as aforesaid, the Unit Owner fails to desist from such violation or to take such corrective action as may be required, the Association shall have the power to issue to the defaulting Unit Owner a ten- (10-) day notice in writing to terminate the rights of the defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use, or control his or her Unit and the Common Elements appurtenant thereto, and thereupon an action in equity may be filed by the Association against the defaulting Unit Owner for an order declaring the termination of the defaulting Unit Owner's right to occupy, use, or control the Unit owned by him or her and the Common Elements appurtenant thereto, on account of the violation of a rule or breach of covenant or provision as aforesaid, and ordering that all the right, title, and interest of the Unit Owner in the Property shall be sold at a judicial sale on such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Unit Owner from reacquiring his or her interest at such judicial sale or by virtue of the exercise of any right of redemption that may be established, and except that the court shall direct that any mortgage of a First Mortgagee be retired out of the proceeds of such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Unit Owner in the order. Any balance of proceeds after satisfaction of such charges, and any unpaid assessments hereunder, or any liens in favor of a First Mortgagee, shall be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser hereat shall thereupon be entitled to a deed to the Unit and, subject to the First right and option of the Association as provided in Paragraph 7e above, to immediate possession of the Unit sold and may apply to the court for an order of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the order shall so provide, that the purchaser shall take the interest in the Property sold subject to this Declaration.

Any Unit Owner in default hereunder or under the provisions of the Bylaws or any rule or regulation adopted by the Association shall pay to the Association, as an agreed Common Expense with respect to his or her Unit, all attorneys' fees incurred by the Association in enforcing the provisions of the Bylaws, this Declaration, or the rules and regulations of the Association as to which the Unit Owner is in default. Until such fees are paid by the Unit Owner, the amount thereof shall constitute a lien on the interest of the Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in §9 of the Act with respect to liens for failure to pay a share of the Common Expenses. Any such lien shall be junior and subordinate to the lien of a First Mortgagee with respect to such Unit.

13. Grantees. Each grantee of the Trustee, or a subsequent Unit Owner, and each purchaser under Articles of Agreement for Deed accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens, and charges, the Bylaws, the rules and regulations of the Association, and the jurisdiction, rights, and powers created or reserved by this Declaration and the provisions of the Act, as at any time amended, and all easements, 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 or estate in said land, and shall inure to the benefit of each grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of



# UNOFFICIAL COPY

conveyance.

14. Failure To Enforce. No terms, obligations, covenants, conditions, restrictions, or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce them, no matter how many violations or breaches may occur.
15. Notices. Whenever any notice is required to be given under the provisions of this Declaration or the Bylaws, a waiver thereof in writing by the Person or Persons entitled to such notice, whether before or at the time stated therein, shall be deemed equivalent to the giving of such notice, provided such waiver or the time of giving it is not contrary to the provisions of the Act. Notices required to be given to any devisee or personal representative of a deceased Unit Owner shall be delivered by mail to such party at his or her or its address appearing in the records of the court wherein the estate of such deceased owner is being administered.
16. The amendment of the Declaration is addressed above in paragraph 7 of Article 13 of the Declaration of Condominium Ownership And Of Easements, Restrictions and Covenants For Lukas's 412 North Marion Street dated April 6, 1967, recorded in the office of the Recorder of Deeds for Cook County, Illinois on May 12, 1967, as Document No. 20124926..
17. Arbitration. Any controversy between or among Unit Owners, or any claim by a Unit Owner against the Association, arising out of or relating to the Declaration, Bylaws, or rules and regulations of the Association in which the matter in controversy has either no specific monetary value or a value of \$10,000 or less shall be settled by arbitration in accordance with the Rules of the Illinois Uniform Arbitration Act, with the disputants to share equally in the costs of arbitration.
18. The Unit Owners, by affirmative written vote of at least 75% of the total Unit Owners at a meeting duly called for such purpose, may elect to sell the Property as a whole within ten (10) days after the date of the meeting at which the sale was approved. The Board shall give written notice of such action to the holder of any duly recorded mortgage or trust deed against any Unit Ownership entitled to notice under this Declaration. Such action shall be binding on all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver all instruments and to perform all acts in manner and form as may be necessary to effect such sale; provided, however, that any Unit Owner who did not vote in favor of such action and who has filed written objection therewith with the Board within twenty (20) days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the value of his or her interest, as determined by a fair appraisal, less the amount of any unpaid assessments or charges due and owing from such Unit Owner. In the absence of agreement on an appraiser, such Unit Owner and the Board may each select an appraiser, and the two so elected shall select a third, and the fair market value, as determined by a majority of the three so selected, shall control. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal.
19. Condemnation. In the event of a taking or condemnation by competent authority of any part of the Property, the Association shall, if necessary, restore the improvements on the remaining portion of the Property to conform as closely as possible to the general design, structure, and materials used with respect to the improvements as they existed before the taking or condemnation. In the event that part or all of one or more Units is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Act, and the percentage of ownership interest in the Common Elements allocated to such Unit or portion thereof (as determined by the Board on the basis of diminution in market value of the Unit) shall be reallocated among the remaining Units on the basis of the relative percentage of ownership interests in the Common Elements of the remaining Units. In such cases, this Declaration and the Plat shall be amended accordingly, pursuant to the provisions of the Act. 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 of interest in the Common Element. 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 of interest in the Common Elements. Any such proceeds available from the withdrawal of Limited Common Elements shall be distributed in accordance with the interests of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof so withdrawn shall cease or shall be equitably reduced.

# UNOFFICIAL COPY

20. **Violations of Certain Rules.** If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (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 survivor of the now living lawful descendants of George W. Bush, the now incumbent President of the United States, Richard B. Cheney, the now incumbent Vice President of the United States, and Richard M. Daley, the Mayor of the City of Chicago, Illinois.
21. **Severability.** The invalidity of any restriction hereby imposed, or of any provision hereof, or of any part of such restriction or provision, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration, and all of the terms hereof are hereby declared to be severable.
22. **Construction.** The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a first-class condominium development.
23. **Rights of First Mortgagees.** Any mortgage or trust deed owned or held by a First Mortgagee and Recorded before the Recording or mailing of a notice by the Association of the amount owing by a Unit Owner who has refused or failed to pay his or her share of the monthly assessment when due shall be superior to the lien of such unpaid Common Expenses set forth in the notice and to all assessments for Common Expenses that become due and are unpaid subsequent to the date of Recording of such first mortgage or first trust deed. Any First Mortgagee who comes into possession of a Unit pursuant to the remedies provided in the mortgage or trust deed, foreclosure of the mortgage or trust deed, or deed (or assignment) in lieu of foreclosure, shall not be liable for and shall take the Unit and its proportionate interest in the Common Elements free from claims for unpaid common or special assessments levied by the Association that accrue before the date of possession as aforesaid.
- a. A First Mortgagee, or an insurer or guarantor of the note held by a First Mortgagee, on written request to the Association (such request to state the name and address of such First Mortgagee, insurer, or guarantor and identification of the Unit encumbered by the mortgage held by such First Mortgagee), shall be entitled to timely written notice of
    - (1) Any proposed action that requires the consent of a specified percentage of eligible First Mortgagees;
    - (2) Any proposed termination of the condominium project;
    - (3) Any condemnation loss or any casualty loss that exceeds \$10,000 and affects a portion of the Common Elements, or that exceeds \$1,000 and affects any Unit on which there is a first mortgage held, insured, or guaranteed by such eligible holder;
    - (4) Any delinquency in the payment of assessments or charges owed by an owner of a Unit subject to the mortgage of a First Mortgagee, insurer, or guarantor, when such delinquency has continued for a period of 60 days; and
    - (5) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
  - b. Any restoration or repair of the Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications for the Building unless the approval is obtained from at least six (6) Unit Owners and the eligible First Mortgagees of Units that represent at least 51% of the Units subject to mortgages or trust deeds held by eligible First Mortgagees.
  - c. Any election to terminate the condominium project after substantial destruction or substantial taking by condemnation of the Property shall require the approval of at least six (6) Unit Owners and the eligible First Mortgagees of Units that represent at least 51% of the Units subject to mortgages or trust deeds held by eligible First Mortgagees.
  - d. Any election to terminate the condominium project for reasons other than substantial destruction or condemnation of the Property shall require the approval of at least six (6) Unit Owners and the eligible

# UNOFFICIAL COPY

First Mortgagees of Units that represent at least six (6) Units subject to a mortgage or trust deed held by an eligible First Mortgagee.

24. Trustees. In the event title to any Unit should be conveyed to a land trust under which all powers of management, operation, and control of the premises remain vested in the trust beneficiary or beneficiaries, then the trust estate under such trust and the beneficiaries thereunder from time to time shall be liable for payment of any obligation, lien, or indebtedness chargeable or created under this Declaration against such Unit. No claim shall be made against any such title holding trustee personally for payment of any claim, lien, or obligation hereby created, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or obligation, but the amount thereof shall continue to be a charge or lien on the premises notwithstanding any transfer of beneficial interest or the title of such real estate.

IN WITNESS WHEREOF, the Board of Managers of the Association, the President, Vice-President and Treasurer of the Association, and the Unit Owners, have signed this Amended and Restated Declaration of Condominium as of the day and year first above written.

Board of Managers and Officers:

Courtney R. Coates  
Manager and President

Cassandra B. Wilson  
Manager and Vice-President

[Signature]  
Manager and Treasurer

Unit Owners:

1B [Signature]  
[Signature]

1A \_\_\_\_\_

1C Cassandra B. Wilson

2A \_\_\_\_\_

2A \_\_\_\_\_

2B Daniela Lehman

\_\_\_\_\_

2C Courtney R. Coates

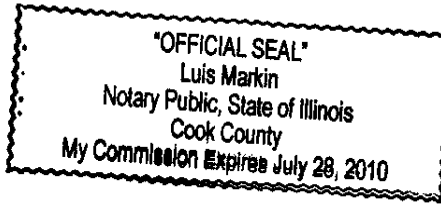
3A [Signature]

3B [Signature]

3C [Signature]

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )



1B

I, Luis Markin a Notary Public in and for said County and State, do hereby certify that Edward Costello (and Ita Costello), personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed, sealed, and delivered the foregoing AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS OF LUKAS'S 412 NORTH MARION STREET as his/her/their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13 day of October, 2006.

Luis Markin  
Notary Public

Ita Costello

Property of Cook County Clerk's Office

*Cassandra W. Wilson*

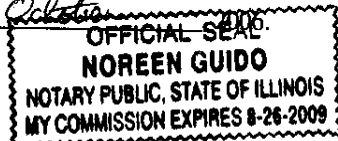
**UNOFFICIAL COPY**

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

1C

I, *Noreen Guido*, a Notary Public in and for said County and State, do hereby certify that *Cassandra W. Wilson* (and \_\_\_\_\_), personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed, sealed, and delivered the foregoing AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS OF LUKAS'S 412 NORTH MARION STREET as his/her/their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5 day of *October*



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

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF COOK

} ss. *Pamela Lehner*

2B

I, *Carole DeRostker* Notary Public in and for said County and State, do hereby certify that *Pamela Lehner* (and \_\_\_\_\_), personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed, sealed, and delivered the foregoing AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS OF LUKAS'S 412 NORTH MARION STREET as his/her/their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this *26* day of *OCTOBER*, 2006.

*Carole DeRostker*  
Notary Public



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

2C

I, Vera A. Sampler a Notary Public in and for said County and State, do hereby certify that Courtney D. Carter (and ~~\_\_\_\_\_~~), personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed, sealed, and delivered the foregoing AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS OF LUKAS'S 412 NORTH MARION STREET as his/her/their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29 day of November, 2006.

*Courtney D. Carter*

*Vera A. Sampler*  
\_\_\_\_\_  
Notary Public



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) ss.  
COUNTY OF COOK        )

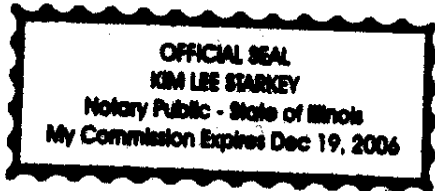
3A

I, Kim Lee Starkey, a Notary Public in and for said County and State, do hereby certify that Ruta Teismann (and \_\_\_\_\_), personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed, sealed, and delivered the foregoing AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS OF LUKAS'S 412 NORTH MARION STREET as his/her/their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 7<sup>th</sup> day of November, 2006.

Kim Lee Starkey  
Notary Public

Ruta Teismann

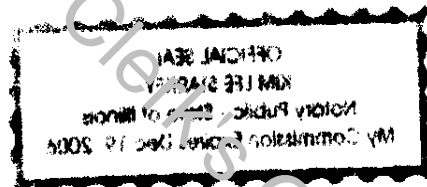


Property of Cook County Clerk's Office



# UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

3B



I, Tom Kirke a Notary Public in and for said County and State, do hereby certify that ~~Serguei Danilov and~~ personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed, sealed, and delivered the foregoing AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS OF LUKAS'S 412 NORTH MARION STREET as his/her/their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 2nd day of October, 2006.



Tom Kirke  
Notary Public

Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

3C

I, Shirley A. Williams a Notary Public in and for said County and State, do hereby certify that Angela Marie (and \_\_\_\_\_), personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed, sealed, and delivered the foregoing AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS OF LUKAS'S 412 NORTH MARION STREET as his/her/their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29 day of Sept., 2006.



Shirley A. Williams  
Notary Public

Angela Marie

of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I, Angela Moore, a Notary Public in and for said County and State, do hereby certify that Courtney Carter, Manager and President of the Association, Cassandra D. Wilson, Manager and Vice-President of the Association, and Ed W. Costello, Manager and Treasurer of the Association, personally known to me to be the same person(s) whose names are subscribed to the foregoing AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS OF LUKAS'S 412 NORTH MARION STREET appeared before me this day in person and acknowledged that they signed, sealed, and delivered the foregoing instrument as their free and voluntary act, for the uses and purposes therein set forth.

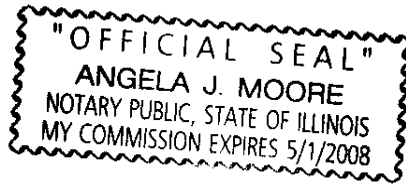
GIVEN under my hand and Notarial Seal this 20 day of November, 2006.

Angela J. Moore  
Notary Public

Courtney Carter

[Signature]

Cassandra D. Wilson



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) ss.  
COUNTY OF COOK        )

### AFFIDAVIT

The undersigned, an officer of the Board of The 412 North Marion Corporation, hereby certifies that a copy of the foregoing document has been mailed by certified mail to all mortgagees having bona fide liens of record against any unit ownership, not less than ten (10) days prior to the date of this affidavit.

Dated: 10.22, 2006

Courtney D. Carter  
Name printed: Courtney D. Carter  
Title: President

I, Vera A. Sampler, a Notary Public in and for said County and State, do hereby certify that Courtney D. Carter, as President of the Association, personally known to me to be the same person whose name is subscribed to the foregoing AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS OF LUKAS'S 412 NORTH MARION STREET appeared before me this day in person and acknowledged that ~~he~~ she signed, sealed, and delivered the foregoing instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of December, 2006.

[Signature]  
Notary Public



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## BYLAWS OF THE 412 NORTH MARION CORPORATION

### ARTICLE I General Provisions

The Association is responsible for the overall administration of the Property through its duly elected Board. Whether or not incorporated, the Association shall have such powers, not inconsistent with the Act, as are now or may hereafter be granted by the General Not For Profit Corporation Act of the State of Illinois. The Association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized and to do every other act not inconsistent with law that may be appropriate to promote and attain the purposes set forth in the Act or the Condominium Instruments. All capitalized terms used but not defined herein that are defined in the Amended and Restated Declaration of Condominium Ownership And Of Easements, Restrictions And Covenants Of Lukas's 412 North Marion Street have the same meaning as ascribed to such terms in the Declaration.

### ARTICLE II Members

Section 1. Classes of Members, Membership, and Termination Thereof. The Association shall have one class of members. The designation of such class and the qualifications of the members of such class shall be as follows:

Each Unit Owner shall be a member of the Association, which membership shall terminate on the sale or other disposition of a member's Unit, at which time the new Unit Owner shall automatically become a member of the Association. Such termination shall not relieve or release any former Unit Owner from any liability or obligation incurred under or in any way connected with the Condominium or the Association during the period of such ownership and membership in the Association. Furthermore, such termination shall not impair any rights or remedies that the Board or others may have against a former Unit Owner arising from, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto. No certificates of stock or other certificates evidencing membership shall be issued by the Association.

Section 2. Votes and Voting Rights.

- a. Except where a provision of these Bylaws or the Declaration requires a specified number of the Unit Owners, the total number of votes of all members shall be 100, and each member shall be entitled to the number of votes equal to his or her percentage ownership interest in the Common Elements (as defined in the Declaration) times 100 at the time any matter is submitted to a vote of the members.
- b. If a Unit is owned by more than one person, the voting rights with respect to such Unit shall not be divided, but shall be exercised as if the Unit Owner consisted of only one person in accordance with the proxy or other designation made by the persons constituting such Unit Owner. Any proxy must be executed in writing by the Unit Owner, or his or her duly authorized attorney in fact, must bear the date of execution, and shall become invalid 11 (eleven) months from the date of its execution. If only one of the persons constituting such Unit Owner is present, he or she shall be entitled to cast the votes allocated to the Unit. If more than one of the persons constituting such Unit Owner are present, the votes allocated to the Unit may be cast only in accordance with the agreement of a majority in interest of such persons. Agreement by a majority in interest of such persons shall be deemed to exist if any of the persons casts the votes allocated to such Unit without protest being made promptly to the person presiding over the meeting by any other persons constituting the Unit Owner.
- c. Any specified percentage of the members, whether majority or otherwise, for purposes of voting or for any other purpose, wherever provided in these Bylaws, shall mean such percentage of the total number of votes hereinabove set forth. Such percentage shall be computed in the same manner as is a specified percentage of the Unit Owners of the Condominium as provided in the Declaration, provided, however, that when 30% or fewer of the Units, by number, possess over 50% in the aggregate of the votes as provided herein, any

# UNOFFICIAL COPY

percentage vote of the members specified herein or in the Declaration shall require 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.

Section 3. Transfer of Membership. Membership in this Association is not transferable or assignable, except as provided in Article II, Section 1, hereof.

Section 4. Installment Contracts. Anything herein to the contrary notwithstanding, in the event of a sale of a Unit, the purchaser of such Unit pursuant to an installment contract for purchase from a seller other than the Trustee shall, during such times as he or she resides in the Unit, be counted toward a quorum for purpose of election of members of the Board at any meeting of the Unit Owners called for the purpose of electing members of the Board and have the right to vote for the election of members of the Board and to be elected to and serve on the Board, unless the seller expressly retains in writing any or all of such rights. In no event may both the seller and purchaser be counted toward a quorum, be permitted to vote for a particular office, or be elected to serve on the Board. Satisfactory evidence of the existence and terms of the installment contract as they relate to the subject matter of this Section shall be made available to the Association or its agents. "Installment Contract" shall have the same meaning as set forth in Section 1(e) of the Dwelling Unit Installment Contract Act, 765 ILCS 75/0.01, *et seq.*, as amended.

## ARTICLE III Meetings of Members

Section 1. Annual Meeting. An annual meeting of the members for the purpose of electing Board members and for the transaction of such other business as may come before the meeting shall be held on the first Sunday of February each year or at such other reasonable place and time (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board delivered to the voting members not less than ten (10) days prior to the date fixed for such meeting. If the election of members of the Board shall not be held when designated herein for any annual meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the members called as soon thereafter as it conveniently may be held. A Unit Owner shall be entitled to receive from the Board, within three working days after the request therefor, the names, addresses, and weighted vote of each Unit Owner entitled to vote at the next annual meeting of members.

Section 2. Special Meetings. Special meetings of the members may be called by the Board, the President, or not less than 20% of the members. All matters to be considered at special meetings of the members called by not less than 20% of the members shall first be submitted in writing to the Board not less than ten (10) days before the date of the special meeting of the members called to consider such matters.

Section 3. Place and Time of Meeting. All meetings of the members shall take place at 7:30 p.m., in some section of the Property designated by the person or persons calling the meeting, or at such other reasonable place or time designated by the Board or the person or persons calling the meeting.

Section 4. Notice of Meetings. Written or printed notice stating the purpose, place, day, and hour of any meeting of members shall be mailed or delivered to each member entitled to vote at such meeting not less than ten (10), nor more than thirty (30), days before the date of such meeting, by or at the direction of the President or the Secretary, or the officer or persons calling the meeting. The notice of a meeting shall be deemed mailed when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the Association, with proper postage thereon prepaid.

Section 5. Quorum. The members present at a meeting in person or by proxy holding at least 20% of the votes that may be cast at any meeting shall constitute a quorum at such meeting. If a quorum is not present at the commencement of any meeting of members, the meeting shall be adjourned and may be called again only in accordance with the provisions of these Bylaws.

Section 6. Proxies. At any meeting of members, a member entitled to vote may vote either in person or by proxy, executed in writing by the member or by his or her duly authorized attorney in fact. No proxy shall be valid after 11 months from the date of its execution. Any proxy distributed by the Board for election of members of 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.

# UNOFFICIAL COPY

Section 7. Manner of Acting. Except as set forth below, and except as otherwise required by the Declaration or the Act, any action to be taken at any meeting of the members at which a quorum is present shall be on the affirmative vote of more than 50% of the members represented at such meeting. The following matters shall require the affirmative vote of at least six (6) of the Unit Owners at a meeting duly called for that purpose:

- a. Merger or consolidation of the Association;
- b. Sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets of the Association; or
- c. The purchase and sale of land or Units on behalf of the Unit Owners.

## ARTICLE IV Board

Section 1. General. The affairs of the Association shall be managed by the Board, which shall act as the Board of Managers of the Condominium as provided in the Act and the Declaration.

Section 2. Number, Tenure, and Qualifications. The number of members of the Board shall be five, and members of the Board shall be elected solely by, from, and among, the members of the Association for a term of one year and until their respective successors shall have been elected and qualified. All members of the Board shall be elected at large. Each member of the Board shall hold office without compensation. In the event that a member of the Association is a corporation, partnership, trust, or other legal entity other than a natural person or persons, then any shareholder, officer, or director of such corporation, partner of such partnership, beneficiary or individual trustee of such trust, or manager of such other legal entity may be eligible to serve as a member of the Board. If there are multiple owners of a single Unit, only one of the multiple owners shall be eligible to serve as a member of the Board at any one time. A member of the Board may succeed himself or herself in office.

Section 3. Election. At each annual meeting of the Unit Owners, the Unit Owners shall elect the entire Board for the forthcoming year. In all elections for the members of the Board, the five candidates receiving the highest number of votes shall be deemed elected. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of the ballots at such election. The Board may disseminate to Unit Owners biographical and background information about candidates for election to the Board if (a) no preference is expressed in favor of any candidate and (b) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated.

Section 4. Regular Meetings. A regular annual meeting of the Board shall be held immediately after and at the same place as the annual meeting of members. The Board shall, by regulations that the Board may from time to time adopt, provide the time and place for the holding of additional regular meetings of the Board, provided that the Board shall meet at least four times per year.

Section 5. Special Meetings. Special meetings of the Board may be called by or at the request of the President or at least 25% of the members of the Board. The person or persons permitted to call special meetings of the Board may fix the time and place for holding any special meeting of the Board called by them.

Section 6. Notice. Written notice of any special meeting of the Board shall be mailed or delivered to all members of the Association and all members of the Board not calling the meeting at least 48 hours before the date of such special meeting. Written notice of regular meetings of the Board shall be mailed or delivered to all members of the Association at least 48 hours before the date of such meeting. All such notices shall be deemed to be mailed when deposited in the United States mail addressed to each member at his or her address as it appears on the records of the Association, with proper postage thereon prepaid. The business to be transacted at or the purpose of any regular or special meeting of the Board shall be specified in the notice. Notices of a regular meeting of the Board need not be served on members of the Board. However, copies of notices of meetings of the Board shall be posted in entranceways or other conspicuous places in the condominium designated by the Board at least 48 hours before the meeting.



# UNOFFICIAL COPY

Section 7. Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a majority of the members of the Board are present at the commencement of the meeting, the meeting shall be adjourned and may be called again only in accordance with the provisions of these Bylaws.

Section 8. Manner of Acting. The act of a majority of the members of the Board present at the meeting at which a quorum is present at the commencement of the meeting shall be the act of the Board, except when otherwise provided by law or in the Condominium Instruments.

Section 9. Vacancies. Any vacancy occurring in the Board by reason of death, removal, or resignation of a member of the Board shall be filled by two-thirds vote of the remaining members of the Board. A member elected by the Board to fill a vacancy shall serve until the next meeting of the members; provided that if a petition is filed with the Board signed by members holding at least 20% of the votes of the Association requesting a meeting of the members to fill the vacancy for the balance of the unexpired term of office of his or her predecessor, the term of the member so elected by the Board shall terminate 30 days after the filing of the petition, and a meeting of the members for the purpose of filling such vacancy for such unexpired term shall be called no later than 30 days following the filing of such petition. Members of the Board may resign at any time by written resignation delivered or mailed to any officer of the Association, which resignation shall be effective on receipt of said resignation. If, as a result of the death, removal, or resignation of a member of the Board, no member of the Board remains in office, a special meeting of members may be called to fill all vacancies for the unexpired terms of the members of the Board.

Section 10. Removal. Any member of the Board may be removed from office by the affirmative vote of at least six (6) of the Unit Owners of the Association at a special meeting called for such purpose.

Section 11. Adoption of Rules and Regulations. All rules and regulations, or amendments thereto, shall be adopted by the Board after a meeting of the members called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations, which rules and regulations conform to the requirements of the Act and the Declaration and these Bylaws. No quorum is required at such meeting of the members. No rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution. Such rules and regulations shall be effective sixty (60) days after their adoption, provided that the members may veto the rule or regulation at a special meeting of the members called for such purpose and held before the effective date of the rule or regulation, by a vote of at least six (6) of the Unit Owners of the Association.

Section 12. Open Meetings. All meetings of the Board, whether regular or special, shall be open to the members of the Association, except for meetings:

- a. 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;
- b. to consider information regarding appointment, employment, or dismissal of an employee; or
- c. to discuss violations of rules and regulations of the Association, or a Member's unpaid share of Common Expenses.

Any vote on the above matters shall be taken at a meeting, or portion thereof, open to any member. Any member may record the proceedings at meetings required to be open by the Act or these Bylaws by tape, film, or other means, subject to reasonable rules and regulations prescribed by the Board to govern the right to make such recordings.

Section 13. 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 Board member's family has a twenty-five percent (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 Unit Owners are afforded an opportunity by filing a petition, signed by at least twenty percent (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 13, a Board member's immediate family means the Board member's spouse, parents, and children.

# UNOFFICIAL COPY

Section 14. Powers and Duties. The powers and duties of the Board shall include, but not be limited to, the operation, care, upkeep, maintenance, replacement, and improvement of the Common Elements. However, nothing in the foregoing sentence shall be deemed to invalidate any provision in the Condominium Instruments placing limits on expenditures for capital additions or capital improvements to the Common Elements (other than for purposes of repairing, replacing, or restoring portions of the Common Elements) by the Board without the prior approval of the Unit Owners.

Section 15. Board's Determination Binding. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any question of interpretation or application of the provisions of the Declaration, the rules and regulations, or the Bylaws, the determination thereof by the Board shall, absent manifest error, be final and binding on each and all of such Unit Owners.

## ARTICLE V Officers

Section 1. Officers. The officers of the Association shall be a President, one or more Vice Presidents (the number thereof to be determined by the Board), a Treasurer, and a Secretary.

Section 2. Election and Term of Office. The President, Secretary, and Treasurer of the Association shall be elected annually by the Board at the first regular meeting of the Board held after the annual meeting of the members from among the members of the Board. The Vice President or Vice Presidents shall be elected annually by the Board at the first regular meeting of the Board held after the annual meeting of the members from among the membership of the Association. If the election of officers shall not be held at this meeting, the election shall be held as soon thereafter as conveniently may be possible. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until the officer's successor shall have been duly elected and shall have qualified. An officer may succeed himself or herself in office. Officers shall serve without compensation.

Section 3. Removal. Any officer elected by the Board may be removed by a majority vote of the members of the Board.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the Board for the unexpired portion of the term of the member of the Board no longer serving.

Section 5. President. The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. The President shall preside at all meetings of the members and of the Board. The President may sign, with the Secretary or any other proper officer of the Association authorized by the Board, any deeds, mortgages, contracts, or other instruments the Board has authorized to be executed, and any amendment to the Declaration or Plat as provided in the Act, and, in general, shall perform all duties incident to the office of President, and such other duties as may be prescribed by the Board from time to time.

Section 6. Vice President. In the absence of the President, or in the event of the President's inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents, in order of their election) shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions on the President. Any Vice President shall perform such other duties as from time to time may be assigned by the President or by the Board.

Section 7. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for money due and payable to the Association from any source whatsoever, and deposit all such money in the name of the Association in those banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VII of these Bylaws; and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the President or by the Board.

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the members and of the Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of

# UNOFFICIAL COPY

these Bylaws or as required by law; receive all notices on behalf of the Association; together with the President, execute on behalf of the Association amendments to the Condominium Instruments and other documents as required or permitted by the Declaration, these Bylaws, or the Act; be custodian of the records and, if the Association is incorporated, of the seal of the Association and, if the Association is incorporated, see that the seal of the Association is affixed to all documents, the execution of which on behalf of the Association under its seal is duly authorized in accordance with the provisions of these Bylaws; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the President or by the Board.

## ARTICLE VI

### Powers and Duties of the Association and Board

Section 1. General Duties, Powers, etc., of the Board. The Board shall exercise for the Association all powers, duties, and authority vested in the Association by the Act and the Condominium Instruments, including but not limited to the following:

- a. Operation, care, upkeep, maintenance, replacement, and improvement of the Common Elements to the extent the operation, care, upkeep, maintenance, replacement, and improvement of Limited Common Elements is not imposed on Unit Owners hereunder. The Board shall maintain the Common Elements in a condition that is fitting of a first class residential dwelling facility, and shall prevent all of the Common Elements from falling into disrepair or becoming a safety hazard to the Unit Owners, their guests, and all other invitees upon the Property.
- b. Preparation, adoption, and distribution of the annual budget for the Property.
- c. Levying and expending of assessments.
- d. Collection of assessments from Unit Owners.
- e. Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements.
- f. Obtaining adequate and appropriate kinds of insurance.
- g. Owning, conveying, encumbering, leasing, and otherwise dealing with Units and land conveyed to or purchased by it.
- h. Adoption and amendment of rules and regulations covering the details of the operation and use of the Property.
- i. Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property.
- j. Having access to each Unit, from time to time, as may be necessary for the maintenance, repair, or replacement of any Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units. The Board may by resolution prescribe reasonable requirements to provide such access, including the requirement (i) that each Unit Owner provide an emergency contact, which contact shall maintain a key to the Unit, and (ii) that each Unit Owner deposit with a Board representative or property manager a key to the Unit. The Board may take any action necessary in an emergency to gain access to a Unit.
- k. Borrowing money at such rates of interest as it may determine, issuing its notes, bonds, and other obligations to evidence such borrowing, and securing any of its obligations by making a mortgage or giving a security interest in all or any of its property or income.
- l. Paying real estate property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof or other lawful taxing or assessing body, that are authorized

# UNOFFICIAL COPY

by law to be assessed and levied on the real property of the condominium (other than assessments on Units not owned by the Association).

- m. Imposing charges for late payments of a Unit Owner's proportionate share of the Common Expense, or any other expenses lawfully agreed on, and after notice and an opportunity to be heard, levying reasonable fines for violation of the Declaration, Bylaws, and rules and regulations of the Association.
- n. Assigning its rights to future income, including the right to receive Common Expenses assessments.
- o. Recording the dedication of a portion of the Common Elements to a public body for use, as, or in connection with, a street or utility, when authorized by the members under the provisions of Paragraph 5c of the Declaration.
- p. Recording the granting of an easement for the laying of cable television cable when authorized by the members under the provisions of Paragraph 5c of the Declaration.
- q. Recording the grant of an easement for construction, maintenance, or repair of a project for protection against water damage or erosion.
- r. Making reasonable accommodation of the needs of handicapped Unit Owners, as required by the Human Rights Act, in the exercise of its powers with respect to the use of the Common Elements or approval of modification in an individual Unit.

In the performance of their duties, the officers and members of the Board shall exercise the care required of a fiduciary of the members.

Section 2. Specific Powers and Duties. Anything herein contained to the contrary notwithstanding, the Association shall have the following powers:

- a. To engage the services of a manager or managing agent, who may be any person, firm, or corporation, on such terms and compensation as the Association deems fit, and to remove such manager or managing agent at any time, provided any agreement with such manager or managing agent shall extend for not more than three years and must be terminable by either party to such agreement without cause and without payment of a termination fee, on ninety (90) days' or less prior written notice.
- b. To engage the services of any person (including, but not limited to, accountants and attorneys) deemed necessary by the Association at such compensation as is deemed reasonable by the Association, in the operation, repair, maintenance, and management of the Property, or in connection with any duty, responsibility, or right of the Association and to remove, at any time, any such personnel.
- c. To establish or maintain one or more bank accounts for the deposit of any funds paid to or received by the Association.
- d. To invest any funds of the Association in certificates of deposit, money market funds, or comparable investments.
- e. Upon authorization of a two-thirds vote of the members of the Board, or by affirmative vote of not less than a majority of the Unit Owners at a meeting duly called for such purpose, acting on behalf of all Unit Owners, to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments, or charges of the State of Illinois or 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.

Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all the Unit Owners or any of them. The granting of licenses, leases, or concessions as provided in Paragraph 4 of the Declaration shall not be considered conducting an active business for profit.

# UNOFFICIAL COPY

Section 3. Authorized Expenditures. The Association shall acquire and make arrangements for, and pay for out of the Maintenance Fund, in addition to the manager, managing agent, or other personnel above provided for, the following:

- a. Water, waste removal, heating, electricity, telephone, or other necessary utility services for the Common Elements and such services to the Units as are not separately metered or charged to the owners thereof.
- b. Such insurance as the Association is required or permitted to obtain as provided in the Declaration.
- c. Landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintaining, decorating, repairing, and replacing portions of the Common Elements (but not including the Limited Common Elements, which the Unit Owners enjoying the use thereof shall paint, clean, decorate, maintain, and repair) and such furnishings and equipment for the Common Elements as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Common Elements. Anything in the foregoing to the contrary notwithstanding, and except when the need for repair or replacement is due to the act or omission of a Unit Owner, guest, occupant, family member, or pet, the Association shall be responsible for the repair and replacement (and cleaning of the exterior surfaces) of all windows.
- d. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or assessments that the Association deems necessary or proper for the maintenance and operation of the Property or for the enforcement of any restrictions or provisions contained herein.
- e. Any amount necessary to discharge any mechanics lien or other encumbrance levied against the Property or any part thereof that may in the opinion of the Association constitute a lien against the Property or against the Common Elements rather than merely against the interest therein of particular Unit Owners. When one or more Unit 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 Association by reason of said lien or liens shall be specially assessed to said Unit Owners and shall, until paid by such Unit Owners, constitute a lien on the interest of such Unit Owners in the Property, which lien may be perfected and foreclosed in the manner provided in §9 of the Act with respect to liens for failure to pay a share of the Common Expenses.
- f. Maintenance and repair of any Unit or any other portion of the Property that a Unit Owner is obligated to maintain or repair under the terms hereof, if such maintenance or repair is necessary, in the discretion of the Association, to protect the Common Elements or any other portion of the Property, and the owner of said Unit has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of the maintenance or repair is delivered by the Association to the Unit Owner; provided that the Association shall levy a special assessment against such Unit Owner for the cost of the maintenance or repair, and the amount of such special assessment shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in §9 of the Act with respect to liens for failure to pay a share of the Common Expenses.
- g. Maintenance and repair (including payment of real estate taxes and common expenses) with respect to any Unit owned by the Association.
- h. If, due to the act or neglect of a Unit Owner or of a member of its 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 that would otherwise be a Common Expense, the assessment against such Unit Owner of a charge for such damage and such maintenance, repairs, and replacements as may be determined by the Board, to the extent not covered by insurance, and the amount of such special assessment shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in §9 of the Act with respect to liens for failure to pay a share of the Common Expenses.

All expenses, charges, and costs of the maintenance, repair, or replacement of the Common Elements, and any other expenses, charges, or costs that the Association may incur or expend pursuant hereto, shall be approved by the Association, and a written memorandum thereof prepared and signed by the Treasurer. There shall be no structural alterations to, capital additions to, or capital improvements on the Common Elements or property owned by the

# UNOFFICIAL COPY

Association (other than for purposes of repairing, replacing, and restoring existing portions of the Common Elements) requiring an expenditure in excess of Five Thousand Dollars (\$5,000) without the prior approval of at least six (6) of the Unit Owners. Separate or special assessments for additions or alterations to the Common Elements or to Association-owned property not included in an Annual Budget (defined in Article VI, Section 4, of the Bylaws) are subject to the approval of at least six (6) of the Unit Owners.

As used herein, the term "repairing, replacing, and restoring" means to repair, replace, or restore deteriorated or damaged portions of the then-existing decorating, facilities, structural or mechanical components, interior or exterior surfaces, or energy systems and equipment to their functional equivalent prior to the deterioration or damage. In the event the replacement of a Common Element may result in an improvement over the quality of such Common Element as originally designed, the Board may provide for such improvement, provided that if the improvement over and above the functional equivalency of what existed before results in a proposed expenditure in excess of 5 percent of the annual budget, the Board, on receipt of a written petition by Unit Owners with at least 20 percent of the votes of the Association, within 14 days after the Board's action to approve such expenditure, shall call a special meeting of Unit Owners within 30 days after its receipt of such petition. Unless a majority of the total votes of the Unit Owners are cast at this special meeting to reject the expenditure, the Board's decision to make the expenditure is ratified.

## Section 4. Annual Budget.

- a. Each year, on or before November 1st, the Board shall estimate the annual budget of Common Expenses (Annual Budget), including the total amount required for the cost of wages, materials, insurance, services, and supplies that will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements (as hereinafter specified) and each Unit Owner's proposed Common Expense assessment, together with an indication of which portions of the Annual Budget are intended for capital expenditures or repairs or payment of real estate taxes. The Board shall deliver a copy of the proposed Annual Budget to each Unit Owner at least thirty (30) days before the adoption thereof. The Association shall give Unit Owners notice as provided in Article III, Section 4, of the Bylaws of the meeting of the Board, at which the Board proposes to adopt the Annual Budget, or at which any increase or establishment of any assessment, regular or special, is proposed to be adopted.
- b. If said Annual Budget proves inadequate for any reason, including nonpayment of any Unit Owner's assessment, or any nonrecurring Common Expense or any Common Expense not set forth in the Annual Budget as adopted, 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 of ownership in the Common Elements, and which may be payable in one lump sum or such installments as the Board may determine. The Board shall serve notice of such further assessment on all Unit Owners (as provided in Article III, Section 4, of the Bylaws) by a statement in writing, giving the amount and reasons therefor, and such further assessment shall become effective and shall be payable at such time or times as determined by the Board. All Unit owners shall be obligated to pay the further assessment.
- c. If an adopted Annual Budget or any special assessment requires assessment against Unit Owners in any year exceeding 115% of the assessments (both regular and special, if any) for the preceding year, the Board, on written petition by Unit Owners representing at least 20% of the votes of the Association delivered to the Board within 14 days of the Board action, shall call a meeting of the Unit Owners within 30 days of the date of delivery of the petition to consider the budget or special assessment. Unless a majority of the votes of the Unit Owners are cast at a meeting to reject the budget or special assessment, it is ratified. In determining whether special assessments, together with regular assessments, exceed 115% of similar assessments in the preceding year, any separate assessment for expenditures relating to emergencies or mandated by law shall not be included in the computation, and the Board may approve such assessment without the right of Unit Owner veto set forth in this paragraph. As used herein, "emergencies" mean an immediate danger to the structural integrity of the Common Elements or to the life, health, safety, or property of the Unit Owners.
- d. The Annual Budget shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements. Each Unit Owner shall be obligated to pay to the Association, or as it

# UNOFFICIAL COPY

may direct, the portion of the Annual Budget assessed to such Owner in equal monthly installments (subject to acceleration as hereinafter provided) on or before January 1st of the ensuing year, and the 1st day of each and every month of said year.

- e. The failure or delay of the Association to prepare or serve the Annual Budget on the Unit Owners shall not constitute a waiver or release in any manner of the Unit Owners' obligation to pay the maintenance and other costs and necessary Reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual or adjusted budget, the Unit Owners shall continue to pay the monthly assessment charges at the then-existing monthly rate established for the previous period until the monthly assessment payment that is due more than ten (10) days after such new annual Budget shall have been mailed.
- f. Anything herein or in the Declaration to the contrary notwithstanding, the Board may charge to fewer than all Unit owners such portion of the insurance premium for insurance the Association is required or permitted to obtain that reflects increased charges for coverage on the Units owned by such Unit Owners, on such reasonable basis as the Board shall determine. Such charge shall be considered a common expense with respect to the Units owned by such Unit Owners for all purposes herein and under the Declaration.
- g. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such special 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 their relative percentages of ownership interest in the Common Elements.

## Section 5. Annual Accounting.

- a. On or before the 1st day of April of each calendar year commencing 2006, the Association shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid, together with an indication of which portions of the Annual Budget were for 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. Any amount accumulated in excess of the amount required for actual expenses and Reserves shall be credited according to each Unit Owner's percentage of ownership in the Common Elements to the next monthly installments due from Unit Owners under the current year's Annual Budget, until exhausted, and any net shortage shall be added, according to each Unit Owner's percentage of ownership of the Common Elements, to the installments due in the succeeding six months after rendering of the accounting.
- b. The Association shall allow any First Mortgagee to examine the books and records of the Association during reasonable business hours and to receive, on request, annual reports and other financial data prepared by the Association, or at its direction. The Association shall provide an audited financial statement for the preceding fiscal year within one-hundred-twenty (120) days after the end of such fiscal year on submission of a written request by any holder, insurer, or guarantor of a first mortgage secured by a Unit.

## Section 6. Reserves.

- a. The Association shall build up and maintain a reasonable Reserve for operations, contingencies, and replacement. Extraordinary expenditures not originally included in the Annual Budget that may become necessary during the year shall be charged first against such Reserve. In addition, the Association or the Board shall have the right to segregate all or any portion of the Reserve for any specific replacement or contingency on such conditions as the Association or the Board deems appropriate.
- b. The Annual Budget 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: (1) the repair and replacement cost and the estimated useful life of the property 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; (2) the current and anticipated return on investment of Association funds; (3) any independent professional reserve study the Association may obtain; (4) the financial impact on Unit Owners, and the market value of the Units, of any assessment increase needed to

# UNOFFICIAL COPY

fund Reserves; and (5) the ability of the Association to obtain financing or refinancing. Anything to the contrary in the foregoing notwithstanding, the Association may elect to waive in whole or in part the Reserve requirements of this section by a vote of not less than six (6) of the Unit Owners of the Association. In the event the Association elects to waive all or part of the Reserve requirements of this section, such fact must be disclosed after the meeting at which such 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 the information prescribed under §22.1 of the Act, and no member of the Board or the managing agent of the Association shall be liable, and no cause of action may be brought for damages against these parties, for the lack or inadequacy of Reserve funds in the Annual Budget. If the Association elects to waive all or part of such Reserve requirements, the Association may by a vote of not less than six (6) of the Unit Owners of the Association elect to again be governed by the Reserve requirements of this section.

## Section 7. Default in Payment

- a. If a Unit Owner is in default in the monthly payment of the aforesaid charges or assessments, the Association may assess a service charge of Five Dollars (\$5.00) per day beginning on the sixth (6<sup>th</sup>) day of the month for which the balance of the aforesaid charges and assessments, or any part thereof, remains unpaid. The Association 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 provided by law; and there shall be added to the amount due the costs of said suit, together with legal interest and reasonable attorneys' fees to be fixed by the court. In addition, the Association may also take possession of such defaulting Unit Owners interest in the Property and maintain an action for possession of the Unit in the manner provided by law. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or abandonment of his or her Unit.
- b. Each such assessment, together with interest, court costs, late charges, and reasonable attorneys' fees and costs of collections, or the amount of any unpaid fine, shall also be the personal obligation of the person who was the Unit Owner at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them or required by applicable law.

## Section 8. Books of Account and Statement of Account.

- a. The Association shall keep full and correct books of account, which shall be open for inspection by any Unit Owner, or any representative of a Unit Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Unit Owner. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such special 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 their relative percentages of ownership interest in the Common Elements.
- b. Upon ten (10) days' notice to the Association and the payment of a reasonable fee fixed by the Association not to exceed Ten Dollars (\$10.00), any Unit Owner shall be furnished a statement of his or her account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

Section 9. Other Powers and Duties. The Association may number and assign to any Unit Owner the exclusive privilege to use for parking and storage purposes any portion of the Property designated for such purposes; provided, however, that the Association shall have the right of access to all such parking and storage spaces that contain pipes or other portions of the Common Elements that the Association has the duty or right to maintain, repair, or replace. Any such designation by the Association shall not thereafter be changed except on the affirmative vote of a majority of the Unit Owners. All property stored in any parking or storage area shall be at the sole risk of the respective Unit Owner who has the privilege to use it, and neither the Association nor any other Unit Owner shall be considered a bailee, or otherwise responsible therefor. Parking areas assigned to a Unit Owner may be used by such Unit Owner, or his or her guests, may be used for storage, provided that such storage is not unsightly and complies with the rules and regulations promulgated by the Board.



# UNOFFICIAL COPY

## ARTICLE VII

### Contracts, Checks, Deposits, and Funds

Section 1. Contracts. The Board may authorize any officer or officers or agent or agents of the Association, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers or agent or agents of the Association, and in such manner as shall from time to time be determined by resolution of the Association. In the absence of such determination by the Association, such instruments shall be signed by the Treasurer and countersigned by the President of the Association.

Section 3. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board may select.

Section 4. Gifts. The Board may accept on behalf of the Association any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Association.

## ARTICLE VIII

### Books and Records

Section 1. Maintaining Books and Records. The Association shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of its members, the Board, and committees having any of the authority of the Board.

Section 2. Availability for Examination. The manager or 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:

- a. Copies of the recorded Declaration and Bylaws and any amendments thereto, Articles of Incorporation of the Association if incorporated, annual reports if incorporated, and any rules and regulations adopted by the Association or the Board.
- b. 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.
- c. The minutes of all meetings of the Association and the Board, which shall be maintained for seven years.
- d. A record giving the names and addresses of the members entitled to vote.
- e. Ballots and proxies related thereto for all elections to the Board and for any other matters voted on by the Unit Owners, which shall be maintained for not less than one year; provided, however, that in the event the Association adopts rules for secret ballot election as provided in the Act, then, unless directed by court order, only the voting ballot excluding the Unit number shall be subject to inspection and copying.
- f. Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to the General Not For Profit Corporation Act of 1986 of the State of Illinois, as amended.

A reasonable fee covering the direct out-of-pocket cost of providing such information and copying may be charged by the Association or the Board for the cost of providing such information and copying.

# UNOFFICIAL COPY

## ARTICLE IX

### Fiscal Year

The fiscal year of the Association shall begin on the first day of January and end on the last day of December.

## ARTICLE X

### Seal

If the Association is incorporated, the Board shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Association and the words "Corporate Seal, Illinois."

## ARTICLE XI

### Waiver of Notice

Whenever any notice whatsoever is required to be given under the provisions of the General Not For Profit Corporation Act of 1986 of the State of Illinois or under the provisions of the Articles of Incorporation or Bylaws of the Association or the Declaration, a waiver thereof (subject to all the provisions of such instruments) in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## ARTICLE XII

### Amendments to Bylaws

These Bylaws may be altered, amended, or repealed and new Bylaws may be adopted on the affirmative vote of at least six (6) of all of the Unit Owners at a regular meeting, or at any special meeting called for such purpose, by recording an instrument in writing setting forth such alteration, amendment, or repeal that is signed and acknowledged by an authorized member of the Board and that contains an affidavit by an officer of the Association certifying that the necessary affirmative vote of the members of the Association has been obtained.

## ARTICLE XIII

### Liability of Board Members and Officers; Indemnification

Neither the director nor the officers of the Association shall be liable to the Association or the Unit Owners for any mistake of judgment, or for any other acts or omissions of any nature whatsoever, as such director and officers, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Association shall defend, indemnify, and hold harmless any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed 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 or she is or was a director or officer of the Association, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if he or she acted in good faith and in a manner he or she 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 no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or 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 that he or she 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 or her conduct was unlawful.

Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Association in advance of the final disposition of such action, suit, or proceeding, as authorized by the Board in the specific case, on receipt of an undertaking by or on behalf of the director or the officer of the Association to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article. The sums necessary to discharge the obligations of the Association under this Article shall be Common Expenses.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in other capacity

# UNOFFICIAL COPY

while holding such office, and shall continue as to a person who has ceased to be a director or an officer of the Association.

## ARTICLE XIV

### Construction

- a. Nothing hereinabove contained shall in any way be construed as altering, amending, or modifying the Declaration. The Declaration and these Bylaws shall always be construed to further the harmonious, beneficial, cooperative, and proper use and conduct of the Property. If there is any inconsistency or conflict between these Bylaws and the aforesaid Declaration, the provisions of the Declaration shall control.
- b. All words and terms used herein that are also used in the Declaration shall have the same meaning as provided for such words and terms in the Declaration.
- c. In the event the Association is incorporated, the words "Board of Directors" and "Director" shall be substituted for the words "Board" and "Member of the Board," respectively, wherever they appear herein.

Property of Cook County Clerk's Office