

UNOFFICIAL COPY



0811216064

Doc#: 0811216064 Fee: \$150.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 04/21/2008 02:22 PM Pg: 1 of 58

~~Doc#: 0715515066 Fee: \$140.00
Eugene "Gene" Moore RHP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/04/2007 11:48 AM Pg: 1 of 59~~

DECLARATION OF CONDOMINIUM OWNERSHIP AND BY-LAWS, EASEMENTS, RESTRICTIONS AND COVENANTS FOR

SHERIDAN PLACE IN UPTOWN
CONDOMINIUM

COPY

PREPARED BY AND AFTER RECORDING RETURN TO:

Anthony L. Frink
Holland & Knight LLP
131 South Dearborn Street
30th Floor
Chicago, Illinois 60603

Property of Cook County Clerk's Office

* This declaration is being re-recorded to correct Exhibit 1 & D

16284536
2 of 2
The Talon Group#

RECORDING FEE \$ 150
DATE 4-21-08 COPIES 6X
OK C.F.

58PG

UNOFFICIAL COPY

DECLARATION OF CONDOMINIUM OWNERSHIP AND BY-LAWS, EASEMENTS, RESTRICTIONS AND COVENANTS FOR

SHERIDAN PLACE IN UPTOWN CONDOMINIUM

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS	7
1.01 "Act"	7
1.02 "Additional Property"	7
1.03 "Association"	8
1.04 "Board"	8
1.05 "Building"	8
1.06 "By-Laws"	8
1.07 "CC&R"	8
1.08 "Commercial Property"	8
1.09 "Common Elements"	8
1.10 "Common Expenses"	8
1.11 "Condominium Instruments"	8
1.12 "Condominium Property"	8
1.13 "Declarant"	8
1.14 "Declaration"	8
1.15 "Developer"	9
1.16 "Developer's Board"	9
1.17 "First Mortgage"	9
1.18 "Initial Board"	9
1.19 "Limited Common Elements"	9
1.20 "Maintenance Fund"	9
1.21 "Majority" or "Majority of the Unit Owners"	9
1.22 "Occupant"	9
1.23 "Parcel"	9
1.24 "Parking Space"	9
1.25 "Person"	9
1.26 "Plat"	9
1.27 "Purchaser"	9
1.28 "Reserves"	9
1.29 "Storage Area"	9
1.30 "Storage Space"	10
1.31 "Unit"	10
1.32 "Unit Owner"	10
1.33 "Unit Owners Association" or "Association"	10
1.34 "Unit Ownership"	10
1.35 "Voting Member"	10
ARTICLE II – UNITS.....	10
2.01 Description	10
2.02 Decorations and Other Improvements Constituting Part of a Unit	10
2.03 Parking Spaces as Units	10

UNOFFICIAL COPY

ARTICLE III – COMMON ELEMENTS.....	10
3.01 Description	10
3.02 Ownership of Common Elements	11
3.03 Limited Common Elements	11
3.04 No Partition of Common Elements except as Otherwise permitted under the Act	11
3.05 Parking Space	11
3.06 Use of Limited Common Elements	11
ARTICLE IV – GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS.....	12
4.01 Submission of Property to Provisions of Act	12
4.02 No Severance of Ownership	12
4.03 Easements	12
4.04 Streets and Utilities Dedication	14
4.05 Power of Attorney	14
4.06 Easements and Rights to Run with Land	14
4.07 Use of the Common Elements	14
4.08 Community Rooms, Bicycle Rooms and Storage Areas	14
ARTICLE V – COMMON EXPENSES, MORTGAGES AND REAL ESTATE TAXES.....	15
5.01 Common Expenses	15
5.02 Separate Mortgages	15
5.03 Separate Real Estate Taxes	15
ARTICLE VI – INSURANCE.....	15
6.01 Insurance	15
6.02 Insurance Premiums	17
6.03 Insurance Policies	17
6.04 Unit Owners' Insurance	17
6.05 Notice	18
6.06 Waiver	18
ARTICLE VII – ADMINISTRATION AND OPERATION.....	18
7.01 Administration	18
7.02 Duties and Powers of the Association	18
7.03 Liability of the Board	18
7.04 Board's Determination Binding	19
7.05 Administration of Property Prior to Election of Initial Board	19
ARTICLE VIII – MAINTENANCE, ALTERATIONS, DECORATING.....	20
8.01 Maintenance, Repairs and Replacements	20
8.02 Limited Common Elements	21
8.03 Alterations, Addition or Improvements	21
8.04 Decorating	21

UNOFFICIAL COPY

ARTICLE IX – SALE, LEASE OR OTHER ALIENATION.....	22
9.01 Sale or Lease	22
9.02 Gifts	22
9.03 Devise	22
9.04 Gift and Devise Right to Purchase	22
9.05 Involuntary Sale	23
9.06 Right to Cure	23
9.07 Lease	23
9.08 Consent of Voting Members	23
9.09 Trust Unit Owner	23
9.10 Corporation or Other Entity Unit Owner	24
9.11 Exceptions to Board's Right of First Refusal	24
9.12 Financing of Purchase Under Option	24
9.13 Title to Acquired Units	24
9.14 Release or Waiver of Option	24
9.15 Proof of Termination of Option	25
9.16 Resale Documents Required	25
ARTICLE X – DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDING.....	25
10.01 Sufficient Insurance	25
10.02 Insufficient Insurance	25
ARTICLE XI – EMINENT DOMAIN.....	26
11.01 Reallocation of Common Elements and Condemnation Award	26
11.02 Cessation and Adjustment of Common Expenses	26
ARTICLE XII – SALE OF THE CONDOMINIUM PROPERTY.....	26
ARTICLE XIII – BY-LAWS.....	27
ARTICLE XIV – BOARD OF MANAGERS.....	27
14.01 Board of Managers (Board of Directors).....	27
14.02 General Powers of the Board.....	28
14.03 Miscellaneous.....	31
ARTICLE XV – MEMBERS (UNIT OWNERS).....	31
15.01 Voting Rights.....	31
15.02 Meetings.....	32
15.03 Notices of Meetings.....	32
15.04 Miscellaneous.....	32
ARTICLE XVI – ASSESSMENTS – MAINTENANCE FUND.....	33
16.01 Estimated Annual Budget and Assessments.....	33
16.02 Reserves and Adjustments.....	33
16.03 Initial Estimate of Annual Budget.....	34
16.04 Failure to Prepare Estimates.....	34
16.05 Books and Records.....	34
16.06 Use of Funds.....	34

UNOFFICIAL COPY

16.07 Start-Up Costs.....	34
16.08 Insurance.....	35
16.09 Assessments.....	35
16.10 Lien for Delinquent Charges or Assessments.....	35
16.11 Nonuse.....	36
ARTICLE XVII – COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY.....	36
17.01 General Use.....	36
17.02 Obstruction of Common Elements and Unit Maintenance.....	37
17.03 Prohibited Use.....	37
17.04 Unit Owner Insurance.....	37
17.05 Exterior Attachments.....	37
17.06 Window Treatment.....	37
17.07 Floor Coverings.....	37
17.08 Pets, etc.....	37
17.09 Nuisances.....	37
17.10 Unsightliness.....	37
17.11 Personal Effects.....	38
17.12 Commercial Activities.....	38
17.13 For Sale and For Rent Signs.....	38
17.14 Common Elements.....	38
17.15 Exceptions.....	38
17.16 Leases.....	38
17.17 Deposit of Keys.....	38
17.18 Replacement of Mechanical Equipment.....	38
ARTICLE XVIII – REMEDIES FOR BREACH OF COVENANTS RESTRICTIONS AND REGULATIONS.....	38
18.01 Abatement and Enjoyment.....	38
18.02 Involuntary Sale.....	39
18.03 Enforcement by Unit Owners.....	39
ARTICLE XIX – DEVELOPER’S RESERVED RIGHTS.....	39
19.01 In General.....	39
19.02 Sales and Rental Efforts.....	39
19.03 Construction.....	40
19.04 Control of Board.....	40
19.05 Change to Units.....	40
19.06 Assignment by the Developer.....	40
ARTICLE XX – GENERAL PROVISIONS.....	40
20.01 Rights of and Notice to First Mortgagee.....	40
20.02 Notices to Board, Association and Unit Owners.....	41
20.03 Notice to Descendent.....	41
20.04 Binding Effect.....	41
20.05 Waiver.....	42
20.06 Amendments.....	42
20.07 Severability and Inconsistent Provisions.....	43
20.08 Perpetuities and Restraints.....	44
20.09 Liens.....	44

UNOFFICIAL COPY

20.10 Waiver of Claims..... 44

20.11 Construction..... 44

20.12 Headings..... 45

20.13 Consent of Eligible Mortgagees 45

20.14 Land Trust Unit Owner's Exculpation 46

20.15 Annexing Additional Property..... 46

CONSENT OF MORTGAGEE..... 50

EXHIBIT A – LEGAL DESCRIPTION OF PARCEL A-1

EXHIBIT B – LEGAL DESCRIPTION OF CONDOMINIUM PROPERTY B-1

EXHIBIT C – PLAT C-1

EXHIBIT D – PERCENTAGE OF OWNERSHIP OF COMMON ELEMENTS D-1

EXHIBIT E – LEGAL DESCRIPTION OF COMMERCIAL PROPERTY E-1

Property of Cook County Clerk's Office

UNOFFICIAL COPY

DECLARATION OF CONDOMINIUM OWNERSHIP AND BY-LAWS, EASEMENTS, RESTRICTIONS AND COVENANTS FOR

SHERIDAN PLACE IN UPTOWN CONDOMINIUM

THIS DECLARATION is made and entered into by Sheridan Place at Uptown, L.P., an Illinois limited partnership (hereinafter referred to as the "Developer" and/or the "Declarant") as of the 7th day of May, 2007.

WITNESSETH THAT;

WHEREAS, the Declarant is the legal title holder of the following described real estate located in the City of Chicago, County of Cook and State of Illinois together with all improvements now or hereafter thereon and rights now or hereafter appurtenant thereto (hereinafter referred to as the "Parcel"): See Exhibit A attached hereto and made a part hereof, the common address of which is 950 W. Leland Avenue, Chicago, Illinois 60616 and the permanent real estate tax index number is 14-17-206-054-0000; volume 261 (it being understood that Exhibit A is attached for informational purposes only and none of the covenants, conditions, restrictions and easements contained herein shall burden any portion of the Parcel, unless and until such portion is made part of the Condominium Property (as hereinafter defined), to the extent herein so burdened, which Condominium Property shall exclude the Commercial Property (as hereinafter defined)); and

WHEREAS, the Parcel is now or is to be improved with a seven story building containing 60 residential apartment units and parking areas consisting of 66 parking spaces, with commercial space on the first floor; and

WHEREAS, it is the desire and intention of the Declarant to enable the Condominium Property, and all rights and privileges belonging or in anyway pertaining thereto, to be owned by Declarant and by each successor in interest of Declarant, under that certain type or method of ownership commonly known as "Condominium", and to submit the Condominium Property to the provisions of the Condominium Property Act of the State of Illinois, as amended from time to time; and

WHEREAS, the Declarant, has elected by this Declaration to establish, for the benefit of such Declarant and for the mutual benefit of all future Unit Owners or occupants of the Condominium Property, or any part thereof, which shall be known as SHERIDAN PLACE IN UPTOWN CONDOMINIUM or such other name as may be subsequently adopted pursuant to the Act by the Developer or the Association (as hereinafter defined), certain easements and rights in, over and upon the Condominium Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, the Declarant has further elected by this Declaration to declare that the several Unit Owners, Occupants, mortgagees and other persons acquiring any interest in the Condominium Property shall at all times enjoy the benefits of, and shall at all times 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 ownership and to facilitate the proper administration of the Condominium Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Condominium Property.

NOW THEREFORE, Declarant, as the legal title holder heretofore described, and for the purposes above set forth, DECLARES AS FOLLOWS;

ARTICLE 1- DEFINITIONS

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

1.01 "Act" means the "Condominium Property Act", as amended from time to time, of the State of Illinois.

1.02 "Additional Property" means those portions of the Parcel that are not part of the Condominium Property from time to time, excluding the Commercial Property.

UNOFFICIAL COPY

1.03 "Association" means the Association of all the Unit Owners, acting pursuant to By-Laws through its duly elected Board.

1.04 "Board" means the Board of Managers of the Unit Owners' Association, and who are vested with the authority and responsibility of administrating the Condominium Property. In the event the Association is incorporated, the "Board" shall mean the Board of Directors of the incorporated Association.

1.05 "Building" means the building or portion thereof located on the Parcel forming a part of and part of which is included in the Condominium Property from time to time, including all structures, attached or unattached, containing one or more Units, and including the Commercial Property.

1.06 "By-Laws" means the provision for the administration of the Condominium Property including, but not limited to, assessment, maintenance, use, occupancy, sale, leasing and alienation, all as hereinafter set forth, or as the same may be from time to time duly amended. Articles XIII hereof shall constitute the By-Laws of the Association.

1.07 "CC&R" means that certain Declaration of Covenants, Conditions, Restrictions and Easements dated of even date herewith, made by Declarant, which provides for, among other matters, certain limited easements in favor of the Commercial Property and the obligations of the Association, the Unit Owners and the owners of the Commercial Property regarding the common use and the allocation of certain Common Expenses between the Condominium Property being submitted to the provisions of the Act from time to time and the Commercial Property.

1.08 "Commercial Property" means that part of the Parcel which contains commercial space for sale and/or lease, as described on Exhibit E attached hereto and made a part hereof, which Commercial Property is specifically excluded from the Condominium Property and its submission to the provisions of the Act.

1.09 "Common Elements" means all portions of the Condominium Property except the Units, including Limited Common Elements unless otherwise specified.

1.10 "Common Expenses" means the proposed or actual expenses affecting the Condominium Property, including Reserves, if any, lawfully assessed by the Board of the Association, including, without limitation, the expenses of maintenance, repair, administration and operation of the Common Elements.

1.11 "Condominium Instruments" means all documents and authorized amendments thereto recorded pursuant to the provisions of the Act, including the Declaration, By-Laws and Plat.

1.12 "Condominium Property" means Units 302, 305, 306, 311 and 312 and Parking Spaces 22, 41, 43, 49 and 59 as shown on the Plat attached hereto as Exhibit C, any Limited Common Elements designated in the Declaration or on the Plat as being reserved for the use of those Units and Parking Spaces and all of the Common Elements on the first, second and third floors of the Building as shown on the Plat, and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, which is submitted to the provisions of the Act hereby, as the same may be added to from time to time in accordance herewith. It is acknowledged and agreed that any Proposed Units or Proposed Parking Spaces shown on the Plat, and the floors above the third floor, are not included in the Condominium Property at this time, but may be added on to the Condominium Property in the future as provided in Section 20.15 below.

1.13 "Declarant" means, Sheridan Place in Uptown, L.P., an Illinois limited partnership, its agents, successors and assigns, and their respective successors and assigns.

1.14 "Declaration" means the instrument by which the Condominium Property is submitted to the provisions of the Act, as hereinafter provided, including such amendments, if any, to this instrument as may from time to time be adopted pursuant to the terms hereof.

UNOFFICIAL COPY

1.15 "Developer" means Sheridan Place in Uptown, L.P., an Illinois limited partnership, its agents, successors and assigns, and their respective successors and assigns.

1.16 "Developer's Board" has the meaning ascribed thereto in Section 7.05.

1.17 "First Mortgagee" means an owner of a bona fide first mortgage or first trust deed covering any portion of the Condominium Property.

1.18 "Initial Board" means the first Board, the Majority of the members of which are Unit Owners other than the Developer.

1.19 "Limited Common Elements" means a portion of the Common Elements so designated in the Declaration or on the Plat as being reserved for the use of a certain Unit or Units to the exclusion of other Units. Any portion of the Common Elements which by the terms of this Declaration or by its nature or location is clearly intended to serve exclusively a certain Unit or Units (but less than all the Units) or the Unit Owner or Owners thereof shall be deemed a Limited Common Element.

1.20 "Maintenance Fund" means all money collected or received by the Association pursuant to the provisions of the Condominium Instruments.

1.21 "Majority" or "Majority of the Unit Owners" means the owners, without regard to their numbers, who own more than one-half in the aggregate in interest of the entire undivided ownership of the Common Elements. Any specified percentage of the Unit Owners means such percentage in the aggregate in interest of such undivided ownership. "Majority" or "Majority of the members of the Board" means more than 50% of the total number of persons constituting such Board pursuant to the By-Laws. Any specified percentage of the members of the Board of Managers means that percentage of the total number of persons constituting such Board pursuant to the By-Laws.

1.22 "Occupant" means a person, or persons, other than a Unit Owner, in possession of one or more Units.

1.23 "Parcel" has the meaning ascribed thereto above in the recitals.

1.24 "Parking Space" means that portion of the Condominium Property owned by a Unit Owner and designated as a Parking Space as shown or referred to on the Plat. A Parking Space shall be a striped or other designated area designed and intended for the parking of non-commercial motor vehicles. It is acknowledged and agreed that any Proposed Parking Spaces shown on the Plat are not included in the Condominium Property at this time, but may be added on to the Condominium Property in the future as provided in Section 20.15 below.

1.25 "Person" means a natural individual, corporation, partnership, trust, limited liability company, Declarant or other legal entity capable of holding title to real property.

1.26 "Plat" means a plat or plats of survey of the Parcel or portion thereof and of all Units on the Condominium Property submitted to the provisions of the Act (expressly excluding the Commercial Property), which may consist of a three-dimensional horizontal and vertical delineation of all such Units, said Plat being attached hereto as Exhibit C and made a part hereof and recorded with the recording of this Declaration, as the same may be amended from time to time in accordance herewith.

1.27 "Purchaser" means any person or persons other than the Developer who purchases a Unit in a bona fide transaction for value.

1.28 "Reserves" means those sums paid by Unit Owners which are separately accounted for by the Board for purposes specified by the Board, the Act, or the Condominium Instruments.

1.29 "Storage Area" means that part of the Common Elements provided for storage purposes.

UNOFFICIAL COPY

1.30 "Storage Space" means a part of the Condominium Property within the Storage Area intended for storage and constituting part of the Common Elements.

1.31 "Unit" means a part of the Condominium Property (a) within the Building including one or more rooms, occupying one or more floors or a part or parts thereof designed and intended for use as a single family residence or (b) designed and intended for use as a Parking Space, and in either case (a) or (b) its undivided interest in the Common Elements and designated as one of Units 302, 305, 306, 311 or 312 or Parking Spaces 22, 41, 43, 49 and 59 on the Plat. It is acknowledged and agreed that any Proposed Units or Proposed Parking Spaces shown on the Plat, and the floors above the third floor, are not included in the Condominium Property at this time, but may be added on to the Condominium Property in the future as provided in Section 20.15 below.

1.33 "Unit Owner" means the Person or Persons whose estates or interests, individually or collectively, have in the aggregate, ten simple absolute ownership of a Unit.

1.34 "Unit Ownership" mean a part of the Condominium Property consisting of one Unit and its undivided interest in the Common Elements.

1.35 "Voting Member" means the person entitled to exercise all voting power in respect to each Unit Ownership Interest.

ARTICLE II - UNITS

2.01 Description. Units 302, 305, 306, 311 and 312 and Parking Spaces 22, 41, 43, 49 and 59 located on the Property and delineated on the Plat. It is acknowledged and agreed that any Proposed Units or Proposed Parking Spaces shown on the Plat, and the floors above the third floor, are not included in the Condominium Property at this time, but may be added on to the Condominium Property in the future as provided in Section 20.15 below.

It is understood that each Unit consists of the space enclosed or bounded by the horizontal and vertical planes set forth and identified as a Unit in the delineation thereof in Exhibit C. The legal description of each Unit shall consist of the identifying number or symbol of such Unit followed by the legal description of the Condominium Property. Except as otherwise provided in Section 2.02, 3.01 and other applicable provisions hereof, all space, fixtures, and improvements, located within the boundaries of a Unit shall be deemed a part of that Unit. A Unit may also be a Parking Space as delineated by an identifying number or symbol as shown on Exhibit C. Except as provided by the Act, no Unit Owner shall, by deed, plat or otherwise subdivide or in any other manner cause the Unit to be separated into any tracts or parcels different from the whole Unit as shown on Exhibit C.

2.02 Decorations and Other Improvements Constituting Part of a Unit. To the extent that perimeter and partition walls, floors or ceilings are designated as the boundaries of the Units or of any specified Units, all decorating, wall and floor coverings, paneling, molding, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such Units, while all other portions of such walls, floors or ceilings shall be deemed part of the Common Elements.

2.03 Parking Spaces as Units. The legal description of each Parking Space shall consist of the identifying symbol of each space as set forth in Exhibit C and each Parking Space shall be considered a Unit. Ownership of each Parking Space shall be conveyed by deed. The owner of such Parking Space shall be a Unit Owner and the Unit shall be for the exclusive use to park automobiles, or other non-commercial vehicles.

ARTICLE III - COMMON ELEMENTS

3.01 Description. Except as otherwise provided in this Declaration, the Common Elements shall consist of all portions of the Condominium Property except the Units, and including the Limited Common Elements, unless otherwise expressly specified herein. Without limiting the generality of the foregoing, the Common Elements shall include the land, foundation, halls, stairways, entrances, exits, vestibules, lobbies, laundry room, Storage Areas, mechanical equipment areas, elevator, outside walks and driveway, the roof and attic, if any, of the Building, the parking area not designated as Units, landscaping, structural parts of the Building including structural parts and columns located within Unit boundaries

UNOFFICIAL COPY

as shown on the Plat, such component parts of walls, floors and ceilings not located within the Unit boundaries as shown on the Plat, pipes, ducts, shafts, electrical wiring and conduits, central plumbing facilities, public utility lines and other utility installations to the outlets in the Units and public utility lines serving the Common Elements or more than one Unit.

3.02 Ownership of Common Elements. Each Unit Owner shall own an undivided interest in the Common Elements as a tenant in common with all the other Unit Owners of the Condominium Property, and, except as otherwise limited in the Declaration, shall have the right to use the Common Elements (except the Limited Common Elements) for all purposes incident to the use and occupancy of the Unit as a place of residence, and such other incidental uses permitted by this Declaration, which rights shall be appurtenant to and run with the Unit. Each Unit's corresponding percentage of ownership in the Common Elements shall be expressed by a percentage amount and, once determined, shall remain constant, and may not be changed, without unanimous approval of all Unit Owners, unless otherwise permitted or provided for in the Act or the Declaration. The Developer has so determined each Unit's corresponding percentage of ownership in the Common Elements as set forth in Exhibit D attached hereto, and each Unit Owner accepts such determination. Notwithstanding the foregoing provisions, the Board may restrict or prohibit use by the Unit Owners and Occupants of the following portions of the Common Elements, and in connection therewith may limit access thereto to janitors, agents, employees and contractors of the Association: boiler room, elevator room, roof and tool room.

3.03 Limited Common Elements

(a) **Description.** Except as otherwise in this Declaration provided, Limited Common Elements shall consist of those portions of the Common Elements that are contiguous to and serve a single Unit exclusively as an inseparable appurtenance thereof. Each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements serving his Unit exclusively. Without limiting the generality of the foregoing, the Limited Common Elements shall include specifically such portion of (i) the perimeter walls, ceilings and floors; (ii) perimeter doors and windows; (iii) chutes, flues, ducts, conduits, wires, pipes, shafts, bearing walls, load bearing columns, electrical wiring or conduits, or other system or component part thereof; and (iv) balconies and patios, that serve a Unit exclusively to the extent such system or component part is located outside the boundaries of a Unit.

(b) **Transfer of Use and Possession of Limited Common Elements.** Every deed, lease, mortgage or other instrument which shall convey an interest in a Unit shall be deemed good and sufficient to convey also the right to the exclusive use and possession of the Limited Common Elements serving the Unit.

3.04 No Partition of Common Elements except as otherwise permitted under the Act. There shall be no partition of the Common Elements through judicial proceeding or otherwise until this Declaration is terminated and the Condominium Property is withdrawn from the terms of the Act.

3.05 Parking Space. Declarant hereby reserves the right to sell and/or grant to any Person exclusive ownership of a designated Parking Space. The percentage of ownership of each Parking Space in the Common Elements is set forth on Exhibit D. Wheresoever reference is made to any Parking Space in a legal instrument or otherwise, a Parking Space may be legally described as set out above and every such description shall be deemed good and sufficient for all purposes. Declarant also hereby reserves the right to lease any Parking Space to any Unit Owner and to any other Person and during the term of any such lease the lessee thereof shall have the exclusive use of any such leased Parking Space. The Declarant shall, in the event of exercise of such reserved right, give the Board notice thereof and the name of the Person to whom the Declarant has granted the exclusive use of a Parking Space, which notice shall be conclusive upon the Board and all Unit Owners as to the rights of the Person designated in such notice. Unit Owners of Parking Spaces may exchange, transfer or lease the Parking Space, subject to the terms hereof.

3.06 Use of Limited Common Elements. Each Unit Owner and Occupant shall have the right to (a) the exclusive use and possession of the Limited Common Elements serving exclusively the Unit of such Unit Owner or Occupant, which right shall be appurtenant to and shall run with the title of such Unit, and shall not be separated from such Unit, and (b) the use and possession of the Limited Common Elements serving the Unit of such Unit Owner or Occupant in common with one or more (but not all) other Units, which use and possession shall be to the exclusion of all other persons except the Unit Owners or Occupants of any such other Units to which such Limited Common Elements shall respectively appertain. Except as set forth in the preceding sentence or otherwise permitted by the Declaration or the Act, Limited Common

UNOFFICIAL COPY

Elements may not be transferred between or among Unit Owners, and any such permitted transfer shall be at the expense of such Unit Owners.

ARTICLE IV - GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS

4.01 Submission of Condominium Property to Provisions of Act. The Condominium Property is hereby submitted to the provisions of the Act.

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

4.03 Easements.

(a) **Encroachments.** If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any portion of the Common Elements or any other Unit, as the Common Elements and Units are shown by the surveys comprising the Plat, as a result of the construction, repair, reconstruction, settlement or shifting of any building, a valid mutual easement shall exist in favor of the Unit Owners of the Common Elements and the respective Unit Owners involved, to the extent of the encroachment so long as same exists; provided, however, that no such easement shall arise in favor of the Unit Owner if the encroachment interferes with the structural integrity of any Common Element or the use and enjoyment thereof by any other Unit Owners. A valid easement shall not exist in favor of any Unit Owner who creates an encroachment by his willful conduct or that of his agent.

(b) **Utility and Other Easements.** The City of Chicago, AT&T Teleholdings, Inc. d/b/a AT&T Midwest, Commonwealth Edison Company and all other public utilities serving the Condominium Property and any Person providing cable television or other similar entertainment to the Condominium 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 Condominium Property, into and throughout the Common Elements, and the Units, where reasonably necessary for the purpose of providing utility and entertainment services to the Condominium Property as long as such grantees repair any damage to the Condominium Property resulting from an exercise of their rights hereunder. Subject to the terms of Section 4.04, the Developer or Association may hereafter grant additional utility easements for the benefit of the Condominium Property and easements for cables (provided, however, that with respect to the granting of easements for cable television cables, the requirements of Section 4.03(c) must first be met) and other conduits, lines and other facilities serving the Condominium Property over, under, along and on any portion of the Common Elements. Each mortgagee of a Unit shall be deemed to be subordinate to any easement hereafter granted pursuant to the provisions of this Section 4.03.

(c) **Cable Television.** The grant of an easement for cable television shall be according to the terms and conditions of the local ordinance, where the Condominium Property is located, providing for cable television.

(d) **Easement Reserved to the Association.** The Condominium Property shall be subject to a perpetual easement to the Association, its successors and assigns, for ingress and egress, to perform its obligations and duties as required by this Declaration and By-Laws. Should it be necessary to enter a Unit to repair a Common Element, employees, agents and workmen shall be entitled to entrance by exhibiting to the Unit Owner an order from the Board or its agents.

(e) **Additional Easements Affecting the Condominium Property.** In addition to the foregoing easements created pursuant to this Declaration, the Condominium Property is subject to the CC&R.

(f) The Declarant hereby reserves to itself and the Association, and their respective successors and assigns, the right, without notice to, or the consent of, any Unit Owner or mortgagee of a Unit Ownership: (i) to record a supplement to the Plat showing the location of any or all of such utility conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment "as built;" and (ii) to record, from time to time, additional supplements showing additions,

UNOFFICIAL COPY

modifications and deletions to any or all of such conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment. Once the location of the easement to any such utility or other entity is shown by any supplement or additional supplement to the Plat as aforesaid, the easement granted by this Section 4.03 to such utility or other entity shall be limited to the area or areas located within ten (10) feet on either side of the equipment of such utility or other entity shown on such supplement or additional supplement as such other area designated in the supplement by the Declarant or Association. A power coupled with an interest is hereby granted to the Declarant and the Association, acting by and through their respective duly authorized officers, their respective successors, assigns, agents and designees, and each of them individually without the other's concurrence, as attorney-in-fact to do or cause the foregoing to be done. The acceptance of each deed, mortgage, trust deed or other instrument with respect to a Unit Ownership shall be deemed a grant of such power to each of said attorneys-in-fact, an acknowledgement of a consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to record any and all such supplements.

(g) The Developer, its contractors and subcontractors, and their respective agents and employees shall have an easement for ingress, egress, and access to and throughout the Condominium Property to perform, and as may be required in connection with, the construction and equipping of the improvements on the Parcel, which easement shall continue at the Developer's discretion for two (2) years following the date of the election of the Initial Board. In connection therewith, the Developer, its contractors and subcontractors, and their respective agents and employees shall have the right to take into and through and maintain on the Condominium Property all material and equipment required in connection with such construction and equipping and to temporarily suspend operation of entrances, doors, corridors, and other Common Elements without liability to any Unit Owner or Occupant; provided, however, that at all times Unit Owners and Occupants shall have reasonable access to their respective Units and Limited Common Elements, and the Developer shall cause as little inconvenience to Unit Owners and Occupants in connection therewith as is reasonably possible under the circumstances. The Developer shall promptly repair any damage caused to the Common Elements or any Unit in connection with the exercise of its rights and easements under this Section 4.03(g).

(h) Without limitation of the terms of Section 4.03(g), the right of the Unit Owners to use and possess the Common Elements shall be subject to a blanket easement over the Common Elements in favor of the Developer, and its representatives, agents, associates, employees, contractors, subcontractors, tenants, successors, and assigns, for the purpose of (1) access and ingress to, and egress from, the Condominium Property, or any part thereof, (2) construction, installation, repair, replacement, and restoration of utilities and any other portion of the improvements thereon, including the right to restrict and regulate access to the Common Elements for the purposes of completing construction of the Common Elements or Units, and (3) the installation and maintenance of signs advertising the Units in the Condominium Property, and signs directing potential purchasers to the sales office and model erected in connection with the Units and for such purposes as described in Section 17.13. The foregoing easements in favor of the Developer shall continue until such time as may be required by the Developer, in its sole discretion, to perform, construct, or equip Common Elements or Units, and to make certain modifications thereof, but in no event for more than two (2) years following the election of the Initial Board, at which time such easements shall cease and be of no further force and effect without the necessity of any further action.

(i) A blanket easement over the Condominium 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 management company for the Condominium Property, and any suppliers of water, utility, or cable television or similar entertainment services to the Condominium Property shall be entitled to reasonable access to, over, and through the individual Units as may be required in connection with the operation, 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.

(j) 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.

4.04 Streets and Utilities Dedication. Upon the affirmative vote of at least a two-third majority of the Unit Owners at a

UNOFFICIAL COPY

meeting of Unit Owners duly called for such purpose, the Board shall be authorized to dedicate a portion of the Common Elements to a public body for use as, or in connection with, a street or utility. 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.

4.05 Power of Attorney. Each Unit Owner and mortgagee of any Unit Ownership hereby grants to the Board an irrevocable power of attorney to execute, acknowledge and record for and in the name of all Unit Owners, such instruments as may be necessary to effectuate the granting of easements and dedications pursuant to the provisions of this Article IV; provided, however, that before the Board exercises such power in the case of granting an easement for dedicating a portion of the Common Elements for streets or utilities, the applicable, requisite affirmative vote of Unit Owners required by the provisions of this Article IV shall first be obtained.

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

4.07 Use of the Common Elements.

(a) General. Subject to the provisions of this Declaration, each Unit Owner shall have the nonexclusive right to use the Common Elements (except the Limited Common Elements) in common with the other Unit Owners, as may be required for the purpose of ingress and egress to, and use, occupancy and enjoyment of, the respective Unit owned by such Unit Owner, and such other incidental uses as are permitted by this Declaration. Each Unit Owner shall have the right to the use and possession of the Limited Common Elements serving his Unit and with all other parties to whom such rights extend pursuant to Section 3.06 of this Declaration, and to the exclusion of all other parties. Such rights to use and possess the Common Elements, including the Limited Common Elements, shall be subject to and be governed by the provision of the Act, this Declaration, and rules and regulations of the Association.

(b) Guest Privileges. The aforesaid rights to use the Common Elements contained in Section 4.07 shall extend to the Unit Owner and the members of the immediate family and authorized Occupants, tenants, guests, visitors, agents, servants, invitees, and licensees of the Unit Owner, subject to reasonable rules and regulations of the Association with respect thereto.

(c) Disclaimer of Bailee Liability. Notwithstanding anything to the contrary contained in this Declaration, neither the Board, the Association, any Unit Owner, the Declarant, nor the Developer shall be considered a bailee of any personal property stored in the Common Elements and shall not be responsible for the security of such personal property or for any loss or damage therein, whether or not due to negligence.

4.08 Community Rooms, Bicycle Rooms and Storage Areas. Community rooms, bicycle rooms and Storage Areas, if any, shall be a part of the Common Elements, and include all Storage Spaces. The Declarant, the Board or the Association may allocate portions of the community rooms, bicycle rooms and/or Storage Spaces on such basis and at such fees, if any, as the Declarant, the Board or the Association deems appropriate and may prescribe such rules and regulations with respect to the community rooms, bicycle rooms and/or Storage Areas as it may deem fit.

UNOFFICIAL COPY

ARTICLE V - COMMON EXPENSES, MORTGAGES AND REAL ESTATE TAXES

5.01 Common Expenses. Each Unit Owner shall pay his proportionate share of the Common Expenses of administration, maintenance and repair of the Common Elements and of any other expenses incurred in conformance with the Declaration and By-Laws or otherwise lawfully agreed upon. Such proportionate share of the Common Expenses for each Unit Owner shall be in the same ratio as his percentage of ownership in the Common Elements. Payment thereof shall be in such amounts and at such times as determined in the manner provided in the By-Laws. If any Unit Owner shall fail or refuse to make any such payment of the Common Expenses when due, the amount thereof shall constitute a lien on the interest of such Unit Owner in the Condominium Property as provided in the Act and the Declaration.

5.02 Separate Mortgages.

(a) Each Unit Owner shall have the right, subject to the provisions herein, to make or create a separate mortgage or encumbrance on his respective Unit together with his respective ownership interest in the Common Elements, provided, however, that no Unit Owner shall have the right or authority to make or create or cause to be made or created any mortgage or encumbrance or other lien on or affecting the Condominium Property or any part thereof except only to the extent of his Unit and his respective ownership interest in the Common Elements.

(b) Subsequent to the recording of this Declaration, no liens of any nature shall be created or arise against any portion of the Condominium Property except against any individual Unit or Units and its respective undivided interest in the Common Elements. No labor performed or materials furnished with the consent or at the request of a particular Unit Owner shall be the basis for the filing of a mechanic's lien claim against any other Unit. If the performance of the labor or furnishing of the materials is expressly authorized by the Association, each Unit Owner shall be deemed to have expressly authorized and consented to such performance of labor and furnishing of materials, and each Unit Owner shall be liable for the payment of his Unit's proportionate share of any due and payable indebtedness, as set forth in the Act and the Declaration. A Unit Owner shall not be liable for any claims, damages, or judgments entered as a result of any action or inaction of the Board other than for mechanics' liens as set forth above. Each Unit Owner's liability for any judgment entered against the Board or the Association shall be limited to his proportionate share of the indebtedness, as set forth in the Act and the Declaration, whether collection is sought through assessment or otherwise.

(c) 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 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. This provision shall not be amended, changed, modified or rescinded without the prior written consent of all such First Mortgagees.

5.03 Separate Real Estate Taxes. Real Estate taxes are to be separately taxed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that for any year such taxes are not separately taxed to each Unit Owner, but rather to the Condominium Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements.

ARTICLE VI - INSURANCE

6.01 Insurance. (a) The Association shall acquire and pay for, out of the Maintenance Fund herein provided for, the following:

(i) 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

UNOFFICIAL COPY

Units. 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, notwithstanding any standard mortgage clause to the contrary. Property insurance coverage hereunder shall (A) include the Common Elements and the Units, including the Limited Common Elements and, except as otherwise determined by the Board, the bare walls, floors, and ceilings of the unit, (B) provide coverage for special form causes of loss, and (C) be in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. This coverage need not cover improvements and betterments to the Units installed by Unit Owners, except to the extent Section 6.01(a)(v) is applicable, in which event the Association may assess any increased premium against the Units of the affected Unit Owners.

"Common Elements" for the purposes of this Section 6.01(a) includes fixtures initially installed by the Developer and located within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual Units. Common Elements exclude floor, wall, and ceiling coverings. "Improvements and betterments" for the purposes of this Section 6.01(a) means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the Unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, and built-in cabinets installed by Unit Owners.

(ii) The Board shall have the right to select substantial deductibles to the insurance coverages required or permitted under this Section 6.01 if the economic savings justifies the additional risk and if permitted by law. The deductibles shall be on a per occurrence basis irrespective of the number of insureds suffering injury or damage. Expenses included within the deductible amount arising from insurable loss or damage shall be treated as Common Expenses.

(iii) The Board, at its option, may obtain an appraisal from a qualified appraiser for the purpose of determining the full insurable replacement cost of the Common Elements and the Units for the amount of insurance to be effected pursuant hereto.

(iv) 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 in the destruction of the major portion of one or more Units occurring after the election of the Initial Board, the Association shall engage a corporate trustee as aforesaid upon the written demand of the First Mortgagee or Owner of any Unit so destroyed. The fees of such corporate trustee shall be Common Expenses. In the event of any loss in excess of \$50,000 in the aggregate, at the Board's discretion or request of any Unit Owner, the Board shall solicit bids from reputable contractors. Payment by an insurance company to the Association or to such corporate trustee or agent of the proceeds of any policy, and the receipt of release from the Association or such corporate trustee or agent of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust or agency agreement under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or see to the application of any payments of the proceeds of any policy by the Board or Association or the corporate trustee.

(v) Each Unit Owner, other than the Developer, shall notify the Association in writing of any additions, alterations, or improvements to his Unit, and he shall be responsible for any deficiency in any insurance loss recovery resulting from his failure so to notify the Association. The Association may, but shall not be obligated, 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 prior to the making of such additions, alterations, or improvements.

UNOFFICIAL COPY

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Property in such limits as the Association shall deem desirable, provided that such limit shall not be less than \$1,000,000 per occurrence for personal injury and/or property damage. The Developer and its employees, representatives, and agents must be included as additional insured parties in their capacities as a Unit Owner, member of the Board, management company, or officer of the Association, as appropriate. The Unit Owners must be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements.

(c) 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.

(d) Fidelity bond to protect against dishonest acts on the part of all officers, employees, or other Persons, including the management company and its or his employees, who control or disburse funds of the Association. Such bond shall name the Association as an insured or obligee and shall be in an amount at least equal to the maximum amount of coverage available to protect funds in the custody or the control of the Association or the management company, including Reserves. Any management company that is responsible for the funds held or administered by the Association must be covered by a bond for the maximum amount of coverage available to protect those funds. The Association has standing to make a loss claim against the insurance of the management company as a party covered under the insurance.

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

6.02 Insurance Premiums. Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Association, and the cost of any appraisal that the Association deems advisable in connection with any insurance, shall be Common Expenses.

6.03 Insurance Policies.

(a) Insurance policies procured pursuant to Sections 6.01(a) and (b) must provide for the following:

(i) Each Unit Owner and mortgagee is an insured Person under the policy with respect to liability arising out of the Unit Owner's interest in the Common Elements or membership in the Association.

(ii) The insurer waives its right to subrogation under the policy against any Unit Owner or members of the Unit Owner's household and against the Association and members of the Board.

(iii) The Unit Owner waives his right to subrogation under the Association policy against the Association and the Board.

(b) The Association shall secure policies providing the following:

(i) with respect to the insurance provided for in Paragraph 6.01(a), that the policy cannot be canceled, invalidated, or suspended on account of the conduct of any one or more individual Unit Owners; and

(ii) with respect to the insurance provided for in Section 6.01(b), 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.

6.04 Unit Owners' Insurance. Each Unit Owner shall be responsible for insurance coverage on (a) the furnishings and other items of personal property belonging to a Unit Owner that are contained in a Unit or elsewhere in the Property, insurance on the betterments and improvements to the Unit Owner's Unit not insured pursuant to the provisions of Section 6.01(a), (b) his personal liability to the extent not covered by insurance maintained by the Association; and (c) his

UNOFFICIAL COPY

additional living expense. All policies of casualty insurance carried by each Unit Owner shall be without contribution with respect to the policies of casualty insurance obtained by the Board for the benefit of all of the Unit Owners as above provided.

6.05 Notice. 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.

6.06 Waiver. Each Unit Owner and the Association hereby waive and release any and all claims which he or it may have against any other Unit Owner, the Association, its Officers, the Members of the Board, Declarant, Developer, the management company of the Condominium Property, if any, and their respective employees and agents, for any damage to the Common Elements, the Units, or to any personal property located in the Unit or Common Elements caused by fire or other casualty to the extent that such damage is covered by fire or other form of casualty insurance or would be covered by insurance for which such Unit Owner is responsible pursuant to this Article VI.

ARTICLE VII ADMINISTRATION AND OPERATION

7.01 Administration. The administration of the Condominium Property shall be vested in the Board consisting of the number of persons, and who shall be elected in the manner, provided in the By-Laws contained herein, as Articles XIII, XIV, XV, XVI, XVII and XVIII. The Developer may cause to be incorporated under the laws of the State of Illinois, a not-for-profit corporation (herein referred to as "the Association") under the name of "SHERIDAN PLACE IN UPTOWN CONDOMINIUM ASSOCIATION", or a similar name, which corporation shall be the governing body for all the Unit Owners for the maintenance, repair, replacement, administration and operation of the Common Elements and for such other purposes as are hereinafter provided. In the event the Developer does not elect to incorporate the Association, then at any time on or after the election of the initial Board pursuant to the provisions of Section 7.05 and 14.01(b), the Board may do so upon the affirmative vote of a Majority of the Unit Owners. The Association's articles of incorporation and annual reports filed with the Illinois Secretary of State shall indicate that the association is a condominium association as established under the Act. The Board of Directors of the Association shall be deemed to be the Board of Managers or Board referred to herein and in the Act.

7.02 Duties and Powers of the Association. The Unit Owners' Association is responsible for the overall administration of the Condominium Property through its duly elected Board. The duties and powers of the Association and its Board shall be those set forth in the Association's articles of incorporation, the By-Laws, the Act and this Declaration.

7.03 Liability of the Board. Neither the members of the Board nor the officers of the Association shall be liable to the Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board member and officers, except for any act or omissions found by a court to constitute fraud or willful misconduct in the performance of duty. The Unit Owners (and, to the extent permitted by law, the Association) shall indemnify and hold harmless each of the members of the Board and each of the officers against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers on behalf of the Unit Owners or the Association, or arising out of their status as Board members or officers unless any such contract or act shall have been fraudulent or with willful misconduct. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to reasonable counsel fees, amount of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other in which any member of the Board or officers may be involved by virtue of such action being or having been such member or officer; provided, however, that such indemnity shall not be operative with respect to: (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for fraud or willful misconduct in the performance of his duties as such member or officer, or (b) any matter settled or compromised, where, in the opinion of independent counsel selected by the Board (who may be counsel regularly retained by the Association), there are reasonable grounds for such person being adjudged liable for fraud or willful misconduct in the performance of his duties as such member or officer and such opinion is not successfully challenged in court by the member or officer in question. The Board shall have authority to purchase and maintain, as a Common Expense, errors and omissions insurance on behalf of the officers and members of the Board against any liability settlement based on asserted liability, incurred by them by reason of being or having served in such capacity, whether or not the Association would have the power to indemnify them against such liability or settlement under the provisions of this Section 7.03. It is

UNOFFICIAL COPY

also intended that the liabilities of any Unit Owner arising out of any contract made by the Board, the officers, Declarant, or out of the aforesaid Unit Owner's indemnity, shall be limited to such proportion of the total liability thereunder as such Unit Owner's percentage of interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements.

7.04 Board's Determination Binding. In the event of any dispute or disagreement between any Unit Owners relating to the Condominium Property, or any questions of interpretation or application of the provisions of the Declaration, By-Laws or other Condominium Instruments, the determination thereof by the Board shall be final and binding on each and all of such Unit Owners.

7.05 Administration of Condominium Property Prior to Election of Initial Board. Until the election of the Initial Board, the same rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board by the Act and in the Declaration and By-Laws shall be held and performed by the Developer, which may be exercised by the designation of a Board of Directors designated by the Developer (the "Developer's Board"), which Developer's Board shall consist of three (3) directors who shall serve without compensation. Such Developer's Board shall serve for a period commencing on the date of its designation by the Developer and ending upon the election of the Initial Board as provided below in this Section 7.05. The election of the Initial Board shall be held no later than sixty (60) days after the conveyance by the Developer of seventy-five percent (75%) of the units, or three (3) years after the recording of the Declaration, whichever is earlier. The Developer shall give at least 21 days notice of such meeting to elect the Initial Board and shall provide to any Unit Owner within 3 business days (a business day being any day other than a Saturday, Sunday or State of Illinois or federal holiday) of the request, the names, addresses, telephone numbers (if available), and weighted vote of each Unit Owner entitled to vote at such meeting. Any Unit Owner shall be provided with the same information within 3 business days of the request, with respect to each subsequent meeting to elect members of the Board. If the Initial Board is not elected by the Unit Owners at the time so established, the Developer shall continue in office for a period of thirty (30) days whereupon written notice of his resignation shall be sent to all of the Unit Owners entitled to vote at such election.

Within sixty (60) days following the election of the Initial Board, the Developer shall deliver to the Board:

(a) All original documents as recorded or filed pertaining to the Condominium Property, its administration and the Association, such as the Declaration, By-Laws, the articles of incorporation of the Association, other Condominium Instruments, annual reports, minutes and rules and regulations, contracts, leases, or other agreements entered into by the Association. If any original documents are unavailable, a copy may be provided if certified by affidavit of the Developer, or an officer or agent of the Developer, as being a complete copy of the actual document (as recorded or filed, if applicable);

(b) A detailed accounting by the Developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Condominium Property and copies of all insurance policies and a list of any loans or advances to the Association which are outstanding;

(c) Association funds, which shall have been at all times segregated from any other monies of the Developer;

(d) A schedule of all real or personal property, equipment and fixtures belonging to the Association, including documents transferring the Condominium Property, warranties if any, for all real and personal property and equipment, deeds, title insurance policies, and all real estate tax bills;

UNOFFICIAL COPY

(e) A list of all litigation, administrative action and arbitrations involving the Association, any notices of governmental bodies involving actions taken or which may be taken concerning the Association, engineering and architectural drawings and specifications as approved by any governmental authority, all other documents filed with any other governmental authority, all governmental certificates, correspondence involving enforcement of any Association requirements, copies of any documents relating to disputes involving Unit Owners, and originals of all documents relating to everything listed in this Section 7.05(e); and

(f) Any contract, lease, or other agreement made prior to the election of the Initial Board by or on behalf of the Association or the Unit Owners.

Any contract, leases, or other agreement made, prior to the election of a Majority of the Board other than the Developer, by or on behalf of Unit Owners, individually or collectively, the Association or the Board, which extends for a period of more than 2 years from the recording of the Declaration, shall be subject to cancellation by a Majority of the Unit Owners other than the Developer cast at a special meeting of Voting Members called for that purpose during a period of 90 days following expiration of the 2 year period. At least 60 days prior to the expiration of the 2 year period, the Board, or if the Board is still under Developer control, then the Board or the Developer shall send notice to every Unit Owner, notifying them of this provision, what contracts, leases and other agreements are affected, and the procedure for calling a meeting of the Unit Owners for the purpose of voting on termination of such contracts, leases or other agreements. During the 90 day period the other party to the contract, lease, or other agreement shall also have the right of cancellation.

ARTICLE VIII - MAINTENANCE, ALTERATIONS, DECORATING

8.01 Maintenance, Repairs and Replacements. Each Unit Owner, at his own expense, shall furnish and be responsible for all of the maintenance, repairs and replacements within his own Unit and of the windows and doors appurtenant thereto (including the cleaning, maintenance, repair and replacement of glass of windows and doors located on exterior walls adjoining, or forming the perimeter boundaries of, the Unit), which responsibility shall include the maintenance, repairs and replacement of all internal installations of such Unit such as refrigerators, ranges and other kitchen appliances, lighting fixtures and other electrical fixtures, heating, plumbing and air conditioning facilities located within the Unit boundaries as specified in Article II; provided, however, that such maintenance, repairs and replacements as may be required to or on the Common Elements for the bringing of water, gas and electricity to the Unit shall be furnished by the Board as part of the Common Expenses.

The Association at its expense, shall be responsible for the maintenance, repair, and replacement of those portions, if any, of each Unit which contribute to the support of the Building excluding, however, all windows, all exterior doors and the interior surfaces of walls, ceiling and floors. In addition, the Association shall maintain, repair and replace all pipes, wires, conduits, ducts, flues, shafts, and other facilities for the furnishing of utility services which may be located within the Unit boundaries and forming part of any system servicing more than one Unit, exclusive of any portions of the foregoing which may be located at or beyond the wall outlets, or which may be the responsibility of an individual Unit Owner as described herein, or any other provision of this Declaration. Maintenance, repairs and replacements of the Common Elements shall be furnished by the Association acting by and through the Board as part of the Common Expenses subject to the By-Laws and rules and regulations of the Association.

To the extent that equipment, facilities and fixtures within any Unit or Units shall be connected to similar equipment, facilities and fixtures affecting or serving other Units or the Common Elements, the use thereof by the Unit Owners shall be subject to all applicable rules and regulations adopted by the Board.

The Board may cause to be discharged any mechanics' lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Condominium Property or Common Elements, rather than against a particular Unit and its corresponding percentage of ownership in the Common Elements. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses (including reasonable attorneys' fees and costs) incurred by reason of such lien.

UNOFFICIAL COPY

Whenever the Board shall determine, in its discretion, that any maintenance, repair or replacement of any Unit is necessary to protect the Common Elements or any other portion of the Building, the Board may cause a written notice of the necessity for such maintenance, repair or replacement to be served upon such Unit Owner, which notice may be served by delivering a copy thereof to the Unit Owner, or to any Occupant of such Unit should the Unit Owner not reside therein, or by mailing the same by certified or registered mail addressed to the Unit Owner. If such Unit Owner fails or refuses to perform any such maintenance, repair or replacement within a reasonable time as stated in the notice (or any extension thereof approved by the Board), the Board may cause such maintenance, repair and replacement to be performed at the expense of such Unit Owner. The aforesaid written notice shall not be required and the Unit Owner shall immediately perform the necessary maintenance, repair or replacement (or upon his failure to do so, the Board may cause the same to be immediately performed at the expense of such Unit Owner) in cases involving an imminent hazard or danger to the Unit Owners and Occupants or to any portion of the Condominium Property and/or any property located thereon or in other emergency situations.

If, due to the act or neglect of a Unit Owner, or of a member of his family or household pet or of a guest or 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 replacement shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, to the extent such payment is not waived or released under the provisions of Article VI hereof.

The Board shall have exclusive authority to take, or refrain from taking, any action pursuant to this Article VIII. All expenses which, pursuant to this Article VIII are chargeable to any Unit Owner, may be specifically assessed to such Unit Owner and shall be payable by such Unit Owner as prescribed by the Board. No Unit Owner shall have a claim against the Board, Association or another Unit Owner for any work which is the responsibility of the Board or Association pursuant to this Declaration but which the Unit Owner himself has performed or paid for, unless the same shall have been agreed to in writing and in advance by the Board.

8.02 Limited Common Elements. Any charge or expense in connection with expenditures for the Limited Common Elements shall be assessed only against that Unit or Units to which each Limited Common Elements are assigned.

8.03 Alterations, Addition or Improvements. Except as otherwise expressly provided in this Declaration or Bylaws, no alterations of any Common Elements (including the Limited Common Elements) or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Board. Any Unit Owner may make alterations, additions and improvements within his Unit without the prior written approval of the Board (unless the same are specifically prohibited or regulated by the Declaration or by rules and regulations adopted by the Board), but in any event such Unit Owner shall be responsible for any damage to other Units, the Common Elements, or the Condominium Property as a result of such alterations, additions or improvements. Nothing shall be done in any Unit, or in, on or to the Common Elements which would impair the structural integrity, safety or soundness of the Building or which would structurally change the Building or alters the wall or partition, configuration, ceiling, perimeter doors or windows, or floor load or otherwise affects the structure of the Unit, without prior written consent of the Board, and then only in accordance with rules and regulations adopted by the Board.

8.04 Decorating. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating within his Unit from time to time, including, but not limited to, painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. The use of and the covering of the interior surfaces of windows whether by draperies, shades or other items visible on the exterior surfaces of entryway doors to Units shall be subject to the rules and regulations of the Board. Decorating of the Common Elements (other than interior surfaces within the Units as above provided) and any decorating of Units to the extent made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Elements by the Board, shall be furnished by the Board as part of the Common Expenses.

UNOFFICIAL COPY

ARTICLE IX - SALE, LEASING OR OTHER ALIENATION

9.01 Sale. Any Unit Owner who desires to sell his 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 Article IX. If any Unit Owner receives such an offer that he intends to accept, he shall accept such offer subject to the terms of this Article IX 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 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.

9.02 Gift. Any Unit Owner who wishes to make a gift of his Unit, or any interest therein, or who wishes to transfer his 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 to die within sixty (60) days before the contemplated date of such gift or other transfer, shall give to the Association notice of his 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 Section 9.04.

9.03 Devise. In the event that any Unit Owner dies, leaving a will devising his 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 therein, for cash at fair market value, which shall be determined by arbitration as hereinafter provided in Section 9.04.

9.04 Gift and Devise Right to Purchase. 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 Section 9.02, as the case may be, the Association, on the one hand, and the Unit 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

UNOFFICIAL COPY

written notice of such determination to the Association and the Unit 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 Unit Owner, or the devisee or devisees or the personal representative, as the case may be, within the option period.

9.05 Involuntary Sale. 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 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.

9.06 Right to Cure. 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 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.

9.07 Lease. A Unit Owner may lease or sublease his Unit (but not less than his entire Unit, unless such Unit is owned by Declarant) at any time and from time to time provided that (except for a lease or sublease made by a Declarant or an Eligible Mortgagee that either is in possession or is a purchaser at a judicial sale) (a) no Unit may be leased or subleased for a term of less than seven (7) days; (b) no Unit may be leased or subleased and no lease or sublease assigned without a written lease, sublease or assignment; (c) a copy of such lease, sublease or assignment shall be furnished to the Board within ten (10) days after execution thereof; and (d) the rights of any lessee or sub-lessee of the Unit or assignee thereof shall be subject to, and each such lessee, sub-lessee and assignee shall be bound by, the covenants, conditions, and restrictions set forth in this Declaration, Bylaws, and Board rules and regulations, and the lease, sublease, or assignment shall expressly so provide, and a default thereunder shall constitute a default under the lease or sublease; provided, however, that the foregoing shall not impose any direct liability on any lessee or sublessee of a Unit to pay any monthly Common Expense assessments on behalf of the Owner of that Unit.

9.08 Consent of Voting Members. The Association shall not exercise any option set forth above in this Article IX without the prior written consent of 66²/₃% of the Unit Owners, which consent must be obtained, if at all, during the period of thirty (30) days following receipt by the Association of the notice described in Section 9.01 or 9.02 hereof, or thirty (30) days following appointment of the personal representative as described in Section 9.03 hereof, as applicable. The Association may bid to purchase at any auction or sale of the Unit or interest therein of any Unit Owner, deceased or living, which sale is held pursuant to any order or direction of a court on the prior written consent of 66²/₃% of the Unit Owners, which consent shall set forth a maximum price that the Association is authorized to bid and pay for the Unit or interest therein.

9.09 Trust Unit Owner. 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 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.

UNOFFICIAL COPY

9.10 Corporation or Other Entity Unit Owner. When title to any Unit is held by a corporation, partnership, limited liability company or other entity, or when a corporation, partnership, limited liability company or other entity is beneficiary of a trust in title to a Unit, the transfer or bequest of fifty percent (50%) or more of the issued and outstanding shares or interest in such partnership, limited liability company or other entity, shall be deemed a devise of the Unit owned by the corporation, partnership, limited liability company, trust or other entity.

9.11 Exceptions to Board's Right of First Refusal. The terms of this Article IX and the first right and option herein provided for shall not be applicable to:

(a) 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;

(b) 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;

(c) the execution of a bona fide trust deed, mortgage, or other security instrument;

(d) the sale, conveyance, or leasing 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 Condominium 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; and

(e) any sale, conveyance, lease, or transfer of a Unit by the Developer.

9.12 Financing of Purchase Under Option. Acquisition of Units or interests therein under the provisions of this Article IX shall be made from the Maintenance Fund of the Association. If said fund is insufficient, the Association shall levy a special assessment against each Unit Owner other than the Unit Owner of the Unit that is to be acquired by the Association in the ratio that his 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 interests therein, which acquisition is authorized by this Article IX; provided, however, that no financing may be secured by an encumbrance or hypothecation of any portion of the Condominium Property other than the Unit or interest therein to be acquired.

9.13 Title to Acquired Units. Units or interests therein acquired pursuant to the terms of this Article IX, and all proceeds of any sale or leasing 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 Section 9.12 above. Subject to the provisions of the Act and Bylaws, these Units or interests therein shall be sold or leased by the Association for the benefit of such Unit Owners at such price and on such terms as the Association shall determine.

9.14 Release or Waiver of Option. Upon the written consent of all the members of the Board, any of the rights or options contained in this Article IX 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 Article IX may be sold, conveyed, given, or devised free and clear of the provisions of this Article IX. 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

(a) that the provisions of this Article IX 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

UNOFFICIAL COPY

(b) that any conveyance, deed, or lease is, by the terms hereof, not subject to the provisions of this Article IX, if such is the fact;

and such a certificate shall be conclusive evidence of the facts contained therein.

9.15 Proof of Termination of Option. Upon the consent of a Majority of the Board members, any of the options contained in this Article IX may be released or waived and the Unit or interest therein which is subject to an option set forth in this Article may be sold, conveyed, leased, given or devised free and clear of the provisions of this Article.

9.16 Resale Documents Required. In the event of the resale of any Unit by a Unit Owner other than the Developer or the Declarant, and within thirty (30) days after the written request by such Unit Owner, the Board shall deliver a copy of each of the documents and make the disclosures described in and required by Section 22.1 of the Act. The Board shall be allowed to charge a reasonable fee for providing such information.

ARTICLE X DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDING

10.01 Sufficient Insurance. In the event the improvements forming a part of the Condominium Property, or any portion thereof, including any Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, plus Reserves, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds, and if necessary, the Reserves, shall be applied by the Board or the payee of such insurance proceeds in payment thereof; provided, however, that in the event within sixty days after said damage or destruction, the Unit Owners shall elect to sell the Condominium Property as hereinafter provided in Article XII hereof, then such repair, restoration, or reconstruction shall not be undertaken. In the event such repair, restoration or reconstruction is not undertaken, the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit D, after first paying out the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

10.02 Insufficient Insurance. If, in the event of fire or other disaster, the insurance proceeds are insufficient to restore the Building as set forth in Section 10.01 above then:

- (a) The Board shall call a meeting of Unit Owners to be held not later than the first to occur of (a) the expiration of 30 days after the final adjustment of the insurance claims or (b) the expiration of 90 days after the fire or other disaster that caused the damage.
- (b) 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.
- (c) The Building shall be restored and the proposed special assessment shall be levied only upon the vote of 75% of the Unit Owners.
- (d) If the Unit Owners do not vote to restore the Building at the meeting provided for in Section 10.02(c) above, then the Board may, at its discretion, call another meeting or meetings of Unit Owners to reconsider 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.
- (e) If the Unit Owners do not vote to restore the Building under the provisions of this Section 10.02 and the Board does not record a notice as permitted under the Act, then the Unit Owners may, upon the affirmative vote of a Majority of the Unit Owners voting at a meeting duly called for that purpose and with the consent of all First Mortgagees, authorize the President or Vice President and the Secretary or Assistant Secretary to execute and record an amendment to this Declaration for the purpose of withdrawing 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

UNOFFICIAL COPY

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 that 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 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, assessments attributable to the period after such withdrawal shall no longer be required for such withdrawn Unit or shall be equitably reduced to reflect such withdrawn portion.

ARTICLE XI - EMINENT DOMAIN

11.01 Reallocation of Common Elements and Condemnation Award. In the event of a taking or condemnation by competent authority of any part of the Condominium Property, the Association shall, if necessary, restore the improvements on the remaining portion of the Condominium 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. Upon the withdrawal of any Unit or portion thereof due to eminent domain, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board of Managers. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Proceeds available from the withdrawal of any Limited Common Element will be distributed in accordance with the interests of those entitled to their use.

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

ARTICLE XII - SALE OF THE CONDOMINIUM PROPERTY

The Unit Owners through the affirmative vote of Voting Members having at least 75% of the total votes, at a meeting duly called for such purpose, may elect to sell the Condominium Property as a whole. Within ten days after the date of the meeting at which such 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 Section 20.01 of Article XX of this Declaration. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner or form 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 thereto with the Board within twenty 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 fair market value of his interest, as determined by agreement of such Unit Owner and the Board, or if they cannot agree, by arbitration as hereinafter provided, less the amount of any unpaid assessments or charges due and owing from such Unit Owner. In the absence of agreement on the fair market value of such interest and upon written notice from either party to the other, such Unit Owner and the

UNOFFICIAL COPY

Board shall each select an appraiser, and the two so selected shall select a third, and the fair market value, as determined by said third appraiser, shall control. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal. 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 such interest and shall thereupon give written notice of such determination to the Board and the Unit Owner. 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 cost of the appraisal shall be divided equally between such Unit Owner and the Board, and the Board's share shall be a Common Expense.

ARTICLE XIII - BY-LAWS

The provision of Articles XIV, XV, XVI, XVII and XVIII shall constitute the By-Laws of the Association and the By-Laws prescribed by the Act.

ARTICLE XIV - BOARD OF MANAGERS

14.01 Board of Managers (Board of Directors).

(a) The direction and administration of the Condominium Property shall be vested in the Board, consisting of five persons who shall be appointed or elected in the manner herein provided, provided, however, that, irrespective of anything else contained in this Declaration, for a period commencing on the date of its designation by the Developer and ending upon the election of the Initial Board as provided in Section 7.05 above, the Board shall consist of three (3) persons and the Developer shall have the right to designate and select the persons who shall serve as members of the Board or to exercise the powers of the Board as provided in the Act. Except for directors so designated by the Developer, each member of the Board shall be one of the Unit Owners; provided, however, that in the event a Unit Owner is a corporation, partnership, limited liability corporation, trust or other legal entity other than a natural persons, then any officer, director or other designated agent of such corporation, partner of such partnership, member of such limited liability company, beneficiary or other designated agent of such trust or manager of such other legal entity, shall be eligible to serve as a member of the Board.

(b) At the initial meeting provided for in Section 7.05, the Voting Members shall elect the five Board members. In all elections for members of the Board, each Voting Member shall be entitled to cumulate his votes in the manner provided by law and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Members of the Board elected at the initial meeting shall serve until the first annual meeting. Five Board members shall be elected at the first annual meeting. The three persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two years and the two persons receiving the next highest number of votes shall be elected to the Board for a term of one year. In the event of a tie vote, the members of the Board shall determine which members shall have the two year terms and which members shall have the one year terms. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of one year each. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of ballots at such election. The Voting Members having at least two-thirds of the total votes may from time to time increase or decrease such number of persons on the Board or may increase or decrease the term of office of Board members at any annual or special meeting, provided that such number shall not be less than three, and that the terms of at least one-third of the persons on the Board shall expire annually and that no Board member or officer shall be elected in excess of two years; provided, however that a Board member or officer may be reelected at the expiration of his term. All members of the Board shall be elected at large. Members and officers of the Board shall receive no compensation for their services, unless expressly authorized by the Board with the approval of Voting Members having two-thirds of the total votes. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by the Voting Members present at the next annual meeting or at a special meeting of the Voting Members called for such purpose; provided, however, that the remaining members of the Board are authorized to fill any such vacancy by a two-thirds affirmative vote until the next meeting of Unit Owners or for a period terminating no later than 30 days following the filing of a petition signed by Unit Owners holding 20% of the votes of the Association requesting a meeting of the Unit Owners to fill the vacancy for the balance of the term, and a

UNOFFICIAL COPY

meeting of the Unit Owners shall be called for the purpose of filling a vacancy on the Board no later than 30 days following the filing of a petition signed by Unit Owners holding 20% of the votes of the Association requesting such a meeting. Except as otherwise provided in this Declaration, the Condominium Property shall be managed by the Board and the Board shall act by Majority vote of the total number of persons constituting the Board when a quorum exists. A Majority of the total number of the members of the Board shall constitute a quorum. Meetings of the Board may be called, held and conducted in accordance with such resolutions as the Board may adopt.

(c) The Board shall elect from among its members a President who shall preside over both its meetings and those of the Voting Members, and who shall be the chief executive officer of the Board and the Association and who shall execute amendments to the Condominium Instruments, a Secretary who shall keep the minutes of all meetings of the Board and of the Voting Members, who shall mail and receive all notices, and who shall, in general, perform all the duties incident to the office of Secretary, a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect. Except as otherwise hereinabove provided, officers of the Board shall be elected for a term of one year each. Any officer of the Board may be removed at any meeting by the affirmative vote of the Majority of the members of the Board, either with or without cause, and any vacancy in any office may be filled by the Board at any meeting thereof.

(d) Any Board member may be removed from office at any time after the election of Initial Board, by affirmative vote of the Voting Members having at least two-thirds of the total votes, at any special meeting called for that purpose. A successor to fill the unexpired term of a Board member removed may be elected by the Voting Members at the same meeting or any subsequent annual meeting or special meeting called for that purpose.

(e) The Board shall meet at least four times annually and at such other times as the Board deems necessary. Meetings of the Board shall be open to any Unit Owner, except for the portion of any meeting held:

(i) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent;

(ii) to consider information regarding the appointment, employment or dismissal of an employee; or

(iii) to discuss violations of rules and regulations of the Association or a Unit Owner's unpaid share of Common Expenses.

Any vote on the matters enumerated in Subsections 14.01(e), (i), (ii) and (iii) shall be taken at a meeting or portion thereof open to any Unit Owner. Any Unit Owner may record the proceedings at Board meetings required to be open by this Declaration, the By-Laws or the Act by tape, film or other means, but the Board may prescribe reasonable rules and regulations to govern the right to make such recordings. Notice of any such meeting shall be mailed or delivered at least forty-eight hours prior thereto, unless a written waiver of such notice is signed by the Person or Persons entitled to receive such notice pursuant to the Declaration, By-Laws, other Condominium Instruments or provisions of law before the meeting is convened. Copies of notices of meetings of the Board shall be posted in entrance ways, elevators, or other conspicuous places in the Building at least forty-eight hours prior to the meeting of the Board.

14.02 General Powers of the Board.

(a) The power and duties of the Board shall include, but shall not be limited to the following matters:

(i) Operation, care, upkeep, maintenance, repair, replacement and improvement of the Common Elements;

(ii) Preparation, adoption and distribution of the annual budget for the Condominium Property;

(iii) Levying of assessments;

(iv) Collection of assessments from Unit Owners;

UNOFFICIAL COPY

(v) Employment and dismissal of the personnel necessary or advisable for the maintenance, operation, repair and replacement of the Common Elements;

(vi) Obtaining adequate and appropriate kinds of insurance;

(vii) Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to or purchased by it;

(viii) Adoption and amendment of rules and regulations covering the details of the operation and use of the Condominium Property, after a meeting of the Unit Owners 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 and which conforms to the requirements of Section 18(b) of the Act and Article XV hereof; provided, however, 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, and no quorum is required at such meeting of the Unit Owners;

(ix) Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Condominium Property;

(x) 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;

(xi) Paying for water, waste removal, other operating expenses, electricity, telephone and other necessary utility services for the Common Elements;

(xii) Paying for landscaping, gardening, snow removal, painting, cleaning, tuck pointing, maintenance, decorating, repair and replacement of the Common Elements (but not including the windows and doors appurtenant to the Unit and the interior surfaces of the Units, all of which the Unit Owners shall paint, clean, decorate, maintain and repair, except if necessitated by repairs to the Common Elements) and such furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Elements;

(xiii) Paying for any other materials, supplies, furniture, labor, services, maintenance, structural alterations or assessments which the Board is required to secure or pay for pursuant to the terms of this Declaration or By-Laws or which in its opinion shall be necessary or proper for the maintenance, repair, replacement and operation of the Condominium Property as a first class condominium apartment building;

(xiv) Paying any amount necessary to discharge any mechanic's lien or other encumbrance against the entire Condominium Property or any part thereof which may in the opinion of the Board constitute a lien against the Condominium Property or against the Common Elements, rather than merely against the interest thereof of particular Unit Owners. Where 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 Board by reason of said lien or liens (including reasonable attorneys' fees) shall be specially assessed to said Unit Owners;

(xv) Maintaining, repairing or replacing any Unit if such maintenance, repair or replacement is necessary, in the discretion of the Board, to protect the Common Elements or any other portion of the Building, when the Unit Owner has failed or refused to perform said maintenance, repair or replacement on his Unit within a reasonable time after written notice of the necessity of said maintenance, repair or replacement has been mailed or delivered by the Board to said Unit Owner, provided that the Board shall levy a special assessment against such Unit Owner for the cost of said maintenance, repair or replacement, and further provided that the provisions of Section 8.01 of Article VIII requiring immediate maintenance, repair or replacement in cases involving an imminent hazard or danger or in other emergency situations, without prior written notice to the Unit Owner, shall control over the foregoing provisions of this Subsection 14.02(a)(xv);

(xvi) Paying real property taxes, special assessments and any other special taxes or charges of the State of

UNOFFICIAL COPY

Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the Condominium Property;

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

(xviii) Assigning its right to future income, including the right to receive Common Expenses;

(xix) 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 where authorized by the Unit Owners under the provisions of Section 4.04;

(xx) Recording and/or granting of any easement or license for the laying or other installation of cable television cable; and

(xx) Seeking relief on behalf of all Unit Owners when authorized pursuant to Section 14.02(g) from or in connection with the assessment or levying of real property taxes, special assessments and any other special taxes or charges of the State of Illinois or of any political subdivision thereof or of any lawful taxing or assessing body.

(b) The Board or its agent upon reasonable notice may enter any Unit when necessary in connection with any maintenance or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to the Unit Owner as practicable, and any damage caused thereby shall be repaired by the Board as a Common Expense.

(c) The Board's powers hereinabove enumerated and described in the Declaration, shall be limited in that the Board shall have no authority to acquire and pay for any structural alterations, additions to, or improvements of the Common Elements (other than for purposes of replacing or restoring portions of the Common Elements, subject to all the provisions of this Declaration) requiring an expenditure in excess of Ten Thousand Dollars without in each case first obtaining the prior approval of Voting Members having two-thirds of the total votes.

(d) All agreements, contracts, deeds, leases, vouchers (or payment or expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the Treasurer and countersigned by the President of the Board.

(e) The Board may engage the services of an agent to manage the Condominium Property and to perform and have such other duties, rights and obligations required to be performed by, or held by, the Board, to the extent such delegation of such duties, rights and obligations is not prohibited by the Act, and to the extent deemed advisable by the Board.

(f) Nothing hereinabove contained shall be construed to give the Board, Association, or Unit Owners authority to conduct an active business for profit on behalf of all the Unit Owners or any of them.

(g) Upon authorization by a two-thirds vote of the members of the Board or by the affirmative vote of not less than a Majority of the Unit Owners at a meeting duly called for such purpose, the Board, acting on behalf of all Unit Owners, shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or of any other lawful taxing or assessing body, which are authorized by law to be assessed against and levied upon real property and to charge and collect all expenses incurred in connection therewith as Common Expenses.

(h) The Board shall designate one or more of the officers of the Association and/or one or more employees of the management company of the Condominium Property (if such a management company has been engaged by the Board pursuant to the provisions of Section 14.02(e)) to approve payment vouchers pertaining to the payment of Common Expenses and other expenses which the Board is authorized to incur and pay, in the manner hereinafter provided. The payment voucher form shall provide for the insertion of the date of approval of payment, the name of the payee, the amount to be paid, a description of what the payment is being made for and the signature of the person approving the

UNOFFICIAL COPY

payment voucher. Any one of the persons so designated by the Board, as provided for above, must complete (or cause to be completed) and sign such payment voucher before payment is made. In the event none of the persons so designated by the Board is available to approve such payment vouchers, any two members of the Board may approve and sign the same. A duplicate or photocopy of the bill or statement, if any, for which a payment voucher is issued shall be attached to and retained with the voucher. Notwithstanding the foregoing provisions, during the period of time that the Condominium Property is administered by the Developer and prior to the time of the election of the Initial Board pursuant to the provisions of Section 7.05 and 14.01(b), the Developer (or the management company for the Condominium Property, if any) who are neither officers of the Association nor members of the Board, may also incur payment of such expenses without the use of payment vouchers.

(i) The Board shall require that all officers, employees or other persons who either handle or are responsible for funds held or administered by the Association shall furnish a fiduciary bond which covers the maximum amount of funds that will be in the custody of the Association plus the Association reserve fund, the premium cost of which shall be paid by the Association as a Common Expense.

14.03 Miscellaneous. The collection of assessments from Unit Owners by the Association, the Board or their duly authorized agents shall not be considered acts constituting a collection agency for purposes of the Collection Agency Act of the State of Illinois.

ARTICLE XV - MEMBERS (UNIT OWNERS)

15.01 Voting Rights. Each Unit Owner shall be a member of the Association, which membership shall terminate on the sale or other disposition by such member of his Unit, at which time the new Unit Owner shall automatically become a member therein. There shall be one person with respect to each Unit who shall be entitled to vote at any meeting of the Unit Owners. Such Voting Member shall be the Unit Owner or one of the group composed of all the Unit Owners of a Unit or may be some person designated by such Unit Owner or Unit Owners to act as proxy on his or their behalf and who need not be a Unit Owner. Such designations (proxies) shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator or designatee, or by written notice to the Board by the Unit Owner or Units Owners. Any such proxy shall be invalid after 11 months from the date of its execution, unless otherwise provided in the proxy, and must bear the date of its execution. Any or all Unit Owners of a Unit, and their designee, if any, may be present at any meeting of the Voting Members, but only the Voting Member for the Unit may vote or take any other action as a Voting Member either in person or by proxy. In cases of where there are multiple Unit Owners of a Unit and such multiple Unit Owners have not given the Board a written designation of the Voting Member for such Unit, if only one of the multiple Unit Owners is present at a meeting of the Association, he shall be entitled to cast all votes allocated to that Unit, but if more than one of the multiple Unit Owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Unit Owners, and it shall be conclusively presumed that there is such majority agreement if any one of the multiple Unit owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Unit Owners of the Unit. The total number of votes of all Voting Members shall be 100 and each Unit Owner or group of Unit Owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Elements applicable to his or their Unit as set forth in Exhibit D. The Declarant shall designate the Voting Member with respect to any Unit owned by the Declarant, but in the absence of such designation, the Declarant shall be deemed each Voting Member. The Association shall have one class of membership only and nothing contained in the Condominium Instruments shall permit or allow different classes of membership among the Unit Owners.

UNOFFICIAL COPY

15.02 Meetings.

(a) Meetings of the Voting Members shall be held at the Condominium Property or at such other place in Cook County, Illinois, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the Voting Members of at least thirty (30%) percent of the Voting Members and of the Voting Members having at least thirty (30%) percent of the total votes shall constitute a quorum. Unless otherwise expressly provided herein any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes present at such meeting.

(b) The initial meeting of the Voting Members shall be held upon written notice, not less than twenty-one nor more than thirty days after notice is given by the Declarant. Said initial meeting shall be held no later than sixty days after the conveyance by the Declarant of seventy-five percent of the Units, or three years after the recording of the Declaration, whichever is earlier. Thereafter, there shall be an annual meeting of the Voting Members on the first Wednesday of October following such initial meeting and on the first Wednesday of each succeeding October thereafter at 7:30 P.M., or at such other reasonable time or date (not more than thirty 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 days nor more than thirty days prior to the date fixed for such meeting. One of the purposes of the annual meeting shall be to elect members of the Board. If the annual meeting is to be held for any purpose(s) in addition to the election of Board members, the Board shall give written notice of such additional purpose(s) to the Voting Members in the same manner as prescribed in Section 15.02(c) for notice of special meetings.

(c) Special meetings of the Voting Members may be called at any time after the initial meeting provided for in Section 15.02(b) hereof, for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the Voting Members, or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by the President of the Board, a majority of the Board or by the Voting Members having 20% of the total votes and delivered not less than ten days nor more than thirty days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered. Matters to be submitted at special meetings of the Voting Members shall first be submitted to the Board, at least ten days prior to the special meeting, who shall then submit the matters to the Voting Members.

15.03 Notices of Meetings. Notices of Meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Unit of the Unit Owner with respect to which such voting right appertains, if no address has been given to the Board, provided that any such notice shall be delivered no less than ten and no more than thirty days prior to the date fixed for such meetings and shall state the time, place and purpose of such meeting.

15.04 Miscellaneous.

(a) No merger or consolidation of the Association, sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the Condominium Property and assets of the Association or the purchase or sale of land or of Units on behalf of all Unit Owners shall be effectuated unless there is an affirmative vote of two-thirds of the votes of Unit Owners, unless a greater percentage is otherwise provided for in this Declaration or in the Act.

(b) When thirty percent or fewer of the Units, by number, possess over fifty percent in the aggregate of the votes in the Association, any percentage vote of Voting Members specified in the Condominium Instruments, or the Act, shall require instead the specified percentage by number of Units rather than by percentage of interest in the Common Elements allocated to Units that would otherwise be applicable.

(c) In the event of a resale of a Unit, the Purchaser of a Unit from a Seller other than the Developer or Declarant pursuant to an installment contract for purchase shall during such times as he or she resides in the Unit be counted toward a quorum for purposes 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 shall 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 the Seller and Purchaser both be counted toward a quorum, be permitted to vote for a particular office or be elected to and serve on

UNOFFICIAL COPY

the Board. Satisfactory evidence of the installment contract shall be made available to the Association or its agents. For purposes of this Section "installment contract" shall have the same meaning as set forth in Section 1(e) of "An Act relating to installment contracts to sell dwelling structures", approved August 11, 1967, as amended.

(d) The percentage of votes required to modify or amend the By-Laws shall be as specified in Section 20.06, the provisions of which are incorporated herein as part of those By-Laws; provided, however, that such of the provisions of those By-Laws, which are mandated by the Act shall always be embodied in these By-Laws.

ARTICLE XVI - ASSESSMENTS-MAINTENANCE FUND

16.01 Estimated Annual Budget and Assessments. Assessments shall be levied against the Unit Owners during such period as provided in this Article XVI, except that if the closing of the sale of the first Unit Ownership is not on January 1, monthly assessments to be paid by Unit Owners shall be based upon the amount of the budget and the number of months and days remaining in such calendar year. Thereafter, each year on or before November 1, the Board shall estimate the total amount necessary to pay the cost of all Common Expenses 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. The annual budget shall set forth with particularity all anticipated Common Expenses by category as well as all anticipated assessments and other income. The budget shall also set forth each Unit Owner's proposed Common Expense assessment. Each Unit Owner shall receive, at least thirty days prior to the adoption thereof by the Board, a copy of the proposed annual budget together with an indication of which portions are intended for capital expenditures or repairs or payment of real estate taxes. The annual budget shall also take into account the estimated net available cash income for the year from the operation or use of the Common Elements, if any. The "estimated annual budget" shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit D attached hereto. Each Unit Owner shall receive notice, in the same manner as is provided in this Declaration for membership meetings, of any meeting of the Board concerning the adoption of the proposed annual budget or any increase or establishment of an assessment. Said meeting of the Board shall be open to all Unit Owners. If an adopted budget requires assessments against the Unit Owners in any fiscal or calendar year exceeding 115% of the assessments for the preceding year, the Board, upon written petition by Unit Owners with 20 percent of the votes of the Association filed within 14 days of the Board action, shall call a meeting of the Unit Owners within 30 days of the date of filing of the petition to consider the budget and unless a majority of the votes of the Unit Owners are cast at the meeting to reject the budget, it is ratified, whether or not a quorum is present. In determining whether assessments exceed 115% of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the Condominium Property, and anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, shall be excluded from the computation. On or before January 1 of the ensuing year, and the first of each and every month of said year, said Unit Owners jointly and severally shall be personally liable for and obligated to pay to the Board or as it may direct one-twelfth of the assessment against his Unit made pursuant to this Section. The Association shall have no authority to forebear the payment of assessments by any Unit Owner. On or before April 1 of each calendar year following the year in which the initial meeting is held, the Board shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding year actually incurred or paid, together with an indication of which portions 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 assessments, 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 Owner under the current year estimate, until exhausted, and any net shortage shall be added according to each Unit Owner's percentage of ownership in the Common Elements to the installments due in the succeeding six months after rendering the accounting.

16.02 Reserves and Adjustments. The Board shall establish and maintain a reasonable reserve for contingencies and replacements. Any extraordinary or non-recurring Common Expense, any Common Expense not set forth in the budget as adopted, and any increase in assessments over the amount adopted shall be separately assessed against all Unit Owners. Any such separate assessment shall be subject to approval by the affirmative vote of at least two-thirds of the Unit Owners voting at a meeting of such Unit Owners duly called for the purpose of approving the assessment if it involves proposed expenditures resulting in a total payment assessed to a Unit equal to or exceeding the greater of five times the Unit's most recent Common Expense assessment calculated on a monthly basis. All Unit Owners shall be personally liable for and

UNOFFICIAL COPY

obligated to pay their respective adjusted monthly amount.

16.03 Initial Estimate of Annual Budget. Anything to the contrary contained herein notwithstanding, the Developer, acting in its capacity as the Board pursuant to Section 7.05 hereof, or the Developer's Board, as applicable, shall determine and adopt, prior to the conveyance of the first Unit Ownership hereunder, an initial budget commencing with the first day of the month in which the sale of the first Unit Ownership is closed and ending on December 31 of the calendar year in which such sale occurs, and shall continue to determine the proposed annual budget for each succeeding calendar year until such time as the Initial Board elected hereunder takes office, and which may include such sums as collected from time to time at the closing of the sale of each Unit Ownership. Assessments shall be levied against the Unit Owners during said period as provided in Section 16.01 of this Article.

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

16.05 Books and Records. The management company for the Condominium Property or the Board shall maintain the following records of the Association and make the same 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, By-Laws and other Condominium Instruments and any amendments thereto, articles of incorporation of the Association, annual reports and any rules and regulations adopted by the Association or the Board. Prior to the organization of the Association, the Developer shall maintain and make available the records set forth in this Section 16.05(a) for examination and copying.

(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 shall be maintained. The Association shall maintain these minutes for a period of not less than 7 years.

(d) Ballots for all elections to the Board and for any other matters voted on by the Unit Owners shall be maintained for period of not less than 1 year.

(e) Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to Section 25 of the General Not-For-Profit Corporation Act of the State of Illinois, approved July 19, 1943, as amended, shall be maintained.

A reasonable fee may be charged by the Association or the Board for the cost of copying. Upon ten days' notice to the Board and payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

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

16.07 Start-Up Costs. At the time the initial sale of each Unit Ownership is closed, the purchaser of the Unit Ownership shall pay to the Association an amount equal to three (3) times the first full monthly assessment for such Unit Ownership based on the Developer's initial estimate of monthly assessments after the control of the Association passes to the Initial Board. This sum shall be used and applied for start-up costs and as a working capital fund in connection with all initial

UNOFFICIAL COPY

operating expenses for the Common Elements and held for future working capital needs. This payment shall not be refundable or be applied as a credit against the Unit Owner's monthly assessments. The Board or the Developer shall have the right to transfer such funds from time to time as may be necessary to fund the Reserve.

16.08 Insurance. Any insurance premiums assessed on a basis reflecting increased charges for coverage on certain Units may be assessed to such Units.

16.09 Assessments. If a Unit Owner is in default in the monthly payment of the aforesaid charges or assessments or any other charges or assessments provided for in this Declaration or under the Act for thirty days, the members of the Board may bring suit for and on behalf of themselves and as representatives of all Unit Owners, to enforce collection thereof, to foreclose the lien thereof as hereinafter provided and/or to take any other action hereinafter provided for; and there shall be added to the amount due the costs of collection of said suit, and other fees and expenses together with interest on the amount due at the greater of the rate of nine percent per annum, or at the maximum rate permitted under the usury laws of the State of Illinois (if, at the time such amounts become due and payable to the Board, such usury limit is less than nine percent per annum) until paid, reasonable attorneys' fees, and late payment charges and fines imposed by the Board. The amount of any delinquent and unpaid charges or assessments, and interest, costs, reasonable attorneys' fees, expenses, fines and late charges as above provided, shall be and become a lien against the Unit of the Unit Owner involved, and such lien shall take effect and be in force as of the date such delinquent and unpaid charges or assessments became due and payable. In addition to the foregoing the Board or its agents shall have such other rights and remedies to enforce such collections as shall otherwise be provided or permitted by law from time to time. Without limiting the generality of the foregoing, if any Unit Owner shall fail to pay the proportionate share of the Common Expenses or of any other expenses required to be paid hereunder when due, such rights and remedies shall include: (a) the right to enforce the collection of such defaulting Unit Owner's share of such expense, (whether due by acceleration or otherwise), together with interest at the rate provided for above, late payment charges and fines as provided for above, and all fees and costs (including reasonable attorneys' fees) incurred in the collection thereof; (b) the right by giving such defaulting Unit Owner five days' written notice of the election of the Board so to do, to accelerate the maturity of the unpaid installments of such expenses accruing with respect to the balance of the assessment year; and (c) the right to maintain an action for possession against such defaulting Unit Owner for the benefit of all the other Unit Owners in the manner prescribed by Article IX of the Code of Civil Procedure, as amended from time to time, and to execute leases for such defaulting Unit Owner's Unit and apply the rents derived there from against such amounts as are owing by the defaulting Unit Owner, and in any such action brought for possession, the Board shall be permitted to include a claim for all such delinquent assessments and other charges (including all unpaid installments of assessments with respect to the balance of the assessment year, if the Board has elected to accelerate the maturity thereof, as provided for above), together with interest thereon at the rate provided for above, late payment charges, fines, reasonable attorneys' fees and costs of collection. In addition to the above rights and remedies, the Board shall also have the right to foreclose upon the lien provided for above in this Section in accordance with the provisions of Section 16.09.

16.10 Lien for Delinquent Charges or Assessments.

(a) The lien for nonpayment of charges or assessments provided for in Section 16.08 shall be prior to all other liens and encumbrances recorded or unrecorded, except only:

(i) taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of the State of Illinois and other State or Federal taxes which by law are a lien on the Unit or the interest of such Unit Owner therein prior to preexisting recorded encumbrances thereon; and

(ii) encumbrances on the Unit or the interest of such Unit Owner therein recorded prior to the date that the delinquent charges or assessments giving rise to such lien became due and payable.

UNOFFICIAL COPY

(b) Notwithstanding the provisions of Subsection 16.09(a)(ii), encumbrances recorded prior to the effective date of any lien provided for in Section 16.08 shall be subject, as to priority, to such liens to the extent that such liens include charges or assessments falling due and payable subsequent to the date:

- (i) on which the encumbrance takes possession of the encumbered Unit;
- (ii) accepts a conveyance of any interest in such Unit; or
- (iii) has a receiver appointed in a suit to foreclose its encumbrance, whichever is the first to occur.

In furtherance of the foregoing provisions, if the Board has elected to accelerate the maturity of unpaid installments of charges or assessments for the balance of the assessment year in accordance with the provisions of Section 16.08, and the lien for delinquent charges or assessments includes charges or assessments which, but for such election to accelerate, would not otherwise be due and payable, then the portion of the lien pertaining to charges or assessments which would have fallen due after the first to occur of the dates specified in Subsections 16.09(b)(i), (ii) and (iii) had such election to accelerate not been made, shall be prior to encumbrances recorded prior to the effective date of such lien, notwithstanding the election by the Board to so accelerate.

(c) Notwithstanding the provisions of Subsection 16.09(a)(ii) and in addition to the provisions of Section 16.09(b) regarding priorities between the lien provided for in Section 16.08 and encumbrances recorded prior to the effective date of any lien provided for in Section 16.08, with respect to encumbrances which are neither bona fide first mortgages nor trust deeds and which encumbrances contain a statement of a mailing address in the State of Illinois where notice may be mailed to the encumbrancer thereunder, if and whenever and as often as the management company or Board shall send, by United States certified or registered mail, return receipt requested, to any such encumbrancer at the mailing address set forth in the recorded encumbrance a statement of the amounts and due dates of the unpaid common expenses with respect to the encumbered unit, then the prior recorded encumbrance shall be subject to the lien of all unpaid Common Expenses with respect to the Unit which become due and payable within a period of 90 days after the date of mailing of each such notice.

(d) The lien provided for in Section 16.08 shall be in favor of the members of the Board and their successors in office and shall be for the benefit of all other Unit Owners. Notice of such lien may be recorded by the Board, or if the Developer is the management company for the Condominium Property or has a majority of seats on the Board and the management company for the Condominium Property or the Board fails to do so, any Unit Owner may record such notice. Upon the recording of such notice the lien may be foreclosed by an action brought in the name of the Board in like manner as a mortgage of real property. The members of the Board and their successors in office, acting on behalf of the other Unit Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

16.11 Nonuse. No Unit Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Elements or abandonment of their Unit.

ARTICLE XVII - COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Units and Common Elements shall be owned, occupied and used subject to the following covenants and restrictions:

17.01 General Use. No part of the Condominium Property shall be used for other than housing, parking of non-commercial vehicles and related common purposes for which the Condominium 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 for such other uses permitted by this Declaration and for no other purpose. That part of the Common Elements separating any two or more adjoining Units used together as aforesaid may be altered to afford ingress and egress to and from such adjoining Units in such manner and upon such condition as shall be determined by the Association in writing.

UNOFFICIAL COPY

17.02 Obstruction of Common Elements and Unit Maintenance. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements (except in area designated for such purpose) without prior consent of the Association except as herein expressly provided. Each Unit Owner shall be obligated to maintain and keep in good, clean order and repair his own Unit and the Limited Common Elements appurtenant thereto.

17.03 Prohibited Use. Nothing shall be done or kept in any Unit, or in the Common Elements, that will increase the rate of insurance on the Condominium Property or contents thereof, applicable for residential use, without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his Unit, or in the Common Elements, that will result in the cancellation of insurance on the Building, or contents thereof, or that would be in violation of any law. No waste shall be committed in the Common Elements. No Unit Owners shall overload the electrical 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, or connect any machines, appliances, accessories, or equipment to the heating or plumbing system, without the prior written consent of the Association.

17.04 Unit Owner Insurance. Each Unit Owner shall be responsible for his own insurance on his personal property in his own Unit, all other property in his own Unit not covered by the fire and hazard policy acquired and maintained by the Board as hereinbefore provided, his personal property stored elsewhere on the Condominium Property and his personal liability to the extent not covered by the liability insurance for all the Unit Owners obtained by the Board as hereinbefore provided.

17.05 Exterior Attachments. Unit Owners shall not cause or permit anything to be placed on the outside windows or walls of the Building and no sign, awning, canopy, shutter, or radio, television or other antenna (except as installed as of the date this Declaration is recorded or except as thereafter installed by Developer or the Association) shall be affixed to or placed upon the exterior walls, roof or any other portion of the Common Elements, without the prior 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, or those thereafter installed by the Developer or the Association, 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 Developer or the Association, may be installed without the prior written permission of the Association.

17.06 Window Treatment. The use and the covering of the interior surfaces of the glass windows and/or doors appurtenant to the Units of the Building, whether by draperies, shades or other items (including paint and decorations on the exterior surface of such doors) visible from the exterior of the Building, shall be subject to the rules and regulations of the Association.

17.07 Floor coverings. In order to enhance the soundproofing of the Building, the floor covering for all occupied Units shall meet a certain minimum standard as may be specified by rules and regulations of the Board.

17.08 Pets, etc. No animals, reptiles, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that dogs, cats, birds, fish or other usual household pets may be kept in Units, subject to rules and regulations as may be adopted by the Association, provided such 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 Condominium Property upon three days written notice from the Association.

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

17.10 Unsightliness. No clothes, sheets, blankets, laundry nor any kind of other articles 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.

UNOFFICIAL COPY

17.11 Personal Effects. There shall be no playing, lounging or parking or leaving of baby carriages or playpens, bicycles, wagons, toys, barbecue grills, vehicles, benches or chairs or personal property on any part of the Common Elements, except as permitted by and subject to the rules and regulations of the Association or as may be stored in the Storage Spaces to the extent permitted hereby.

17.12 Commercial Activities. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained, or permitted in any Unit or in the Common Elements.

17.13 For Sale and For Rent Signs. No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Condominium Property except at such location and in such form as shall be determined by the Association; provided that during all times that the Declarant and/or the Developer owns or has an interest in any Unit, the right is reserved by the Declarant, the Developer and their respective employees and agents, to maintain on the Condominium Property all models, sales and rental offices, advertising signs (including, without limitation, "For Sale" and "For Rent" signs), banners, and lighting in connection therewith, at such locations on or adjacent to the Condominium Property and in such forms as they shall determine, together with the right of ingress, egress and transient parking therefore through the Common Elements.

17.14 Common Elements. Nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Developer at any time before the election of the Initial Board, without the written consent of the Association.

17.15 Exceptions. The Unit restrictions in Sections 17.01 and 17.12 of this Article XVII shall not be construed in such a manner as to prohibit a Unit Owner from (a) maintaining his professional library therein, (b) keeping his personal business or professional records or accounts therein, or (c) handling his personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of Sections 17.01 and 17.12 of this Article XVII.

17.16 Leases. The provisions of the Act, the Declaration, By-Laws, other Condominium Instruments, and rules and regulations that relate to the use of a Unit or the Common Elements shall be applicable to any Occupant and/or other Person leasing a Unit and shall be deemed to be incorporated in any lease.

17.17 Deposit of Keys. Each Unit Owner shall deposit with the Board duplicate keys for all locks relating to the entryway of his Unit, as well as security codes for all alarm systems relate to entry to his unit.

17.18 Replacement of Mechanical Equipment. Replacement of mechanical equipment must be installed by a licensed and bonded contractor in accordance with rules and regulations adopted and approved by the Board.

ARTICLE XVIII - REMEDIES FOR BREACH OF COVENANTS RESTRICTIONS AND REGULATIONS

18.01 Abatement and Enjoyment. The violation of any restriction or condition or regulation adopted by the Association or the breach of any covenant or provisions herein contained, shall give the Association the right, in addition to the rights set forth in the Section 18.02: (a) to enter upon that part of the Condominium Property where such violation or breach exists and 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 Declarant or Developer nor the Association, nor any of their respective officers, employees, or agents, shall thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate, or remedy by appropriate legal proceeding, either at law or in equity, the continuance of any breach; or (c) to take possession of such Unit Owner's interest in the Condominium Property and to maintain an action for possession of such Unit in the manner provided by law. All expenses of the Association in connection with such actions or proceedings including court costs and reasonable attorneys' fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the greater of the rate of nine percent per annum, or at the maximum rate permitted under the usury laws of the State of Illinois (if, at the time such expenses and damages become due and payable to the Association, such usury limit is less than nine percent per annum) until paid, and late payment charges and fines imposed by the Association shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and

UNOFFICIAL COPY

deemed a part of his respective share of the Common Expenses, and the Association shall have a lien for all of the same upon the Unit of such defaulting Unit Owner and upon all of his additions and improvements thereto and any other interest of such Unit Owner in the Condominium Property and upon all his personal property in his Unit or located elsewhere on the Condominium Property. The provision of Sections 16.08 and 16.09 regarding the establishment, priority and foreclosure of the lien arising by virtue of the nonpayment of charges or assessment shall be applicable to the lien provided for in this Section 18.01. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise by the Association.

18.02 Involuntary Sale. If any Unit Owner (either by his own conduct or by the conduct of any Occupant of his Unit) shall violate any of the covenants, restrictions or provisions of this Declaration, or the rules and regulations adopted by the Association, and such violation shall continue for thirty days after notice in writing from the Association (except in the case of emergency when damage to person or property is threatened, in which case only such notice, if any, as is reasonable under the circumstances shall be required), or shall reoccur more than once after such notice, then the Board shall have the power to issue to the defaulting Unit Owner a ten day notice in writing to terminate the rights of said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use or control his 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 a decree of mandatory injunction against the Unit Owner and/or Occupant or, in the alternative, for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him and the Common Elements appurtenant thereto, on account of the said violation of a rule or breach of covenant or provision as aforesaid, and ordering that all the right, title, and ownership interest of the Unit Owner in and to the Condominium Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Unit Owner from reacquiring his interest at such judicial sale or by virtue of the exercise of any right of redemption that may be established. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, costs of title examinations, title insurance policies and other evidences of title, and all other expenses of the proceeding and sale and fines imposed by the Board, and all such items shall be taxed against the defaulting Unit Owner in such decree or order. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder and any liens in favor of a First Mortgagee of the Unit, shall be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Unit and, subject to the first right and option of the Association as provided in Section 9.04 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 title to the interest in the Condominium Property sold subject to this Declaration.

18.03 Enforcement by Unit Owners. Any aggrieved Unit Owner may enforce the provisions of this Declaration, the By-Laws, or any rules and regulations promulgated by the Board by an action at law or in equity against the defaulting Unit Owner (or Occupant of his Unit) upon a violation or breach described in this Article XVIII against any Person or Persons either to restrain such violation or breach or to recover damages.

ARTICLE XIX - DEVELOPER'S RESERVED RIGHTS

19.01 In General. In addition to any rights or powers reserved or granted to the Developer under the Act or the Condominium Instruments, the Developer shall have the rights and powers set forth in this Article XIX. In the event of a conflict between the provisions of this Article and any other provisions of the Condominium Instruments, the provisions of this Article shall govern. Except as otherwise provided in this Article, the Developer's rights under this Article shall again be in force upon a reacquisition of ownership of or controlling of title to any Unit notwithstanding the fact that, during a period of time prior to such reacquisition, the Developer may not have been vested with or controlled title to any Unit.

19.02 Sales and Rental Efforts. In addition to those rights reserved to Declarant, Developer and their respective employees and agents pursuant to Section 17.13, the provisions of which are incorporated into this Section, Developer may occupy or grant permission to any Person to occupy, with or without rental, as determined by the Developer, one or more Units for business or promotional purposes, including clerical activities, sales and rental offices, model Units for display and the like and to utilize all walkways, roadways, the parking area (except for those portions thereof consisting of Parking Spaces, if any, which are not owned by the Declarant or the Developer) and other Common Elements for ingress, egress and transient parking for all invitees, employees and agents, in connection with the development of the Condominium

UNOFFICIAL COPY

Property and the sale or leasing of Units. The aforesaid rights and privileges are hereby given, and may be exercised and utilized, all without the payment of any fee or charge whatsoever to the Board, the Association or the other Unit Owners.

19.03 Construction. Developer, its agents, contractors, subcontractors, materialmen, and employees shall have the right to come upon the Condominium Property for the purpose of making alterations or improvements to, and completing construction of the Condominium Property and shall have the right to store equipment and materials used in connection with such work on the Condominium Property without payment of any fee or charge whatsoever to the Board, the Association or the other Unit Owners.

19.04 Control of Board. Until the initial meeting of the Unit Owners and the election of the Initial Board, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board by the Act, this Declaration and By-Laws shall be held and performed by the Developer. The Developer may hold and perform such rights and obligations through and as the Developer's Board. In exercising such rights, and the other rights reserved by the Declarant or Developer pursuant to this Declaration, the Declarant or Developer shall not be under any disability which would otherwise be imposed by law by reason of the Declarant's or Developer's interest in the subject matter of any transaction, provided, however, that any such transaction shall have been entered into in good faith.

19.05 Change to Units. The Developer shall have the right to amend a Unit Owner's percentage of ownership in the common elements as shown on Exhibit D to conform to changes in Units as required by the City of Chicago, State of Illinois or other municipality.

19.06 Assignment by the Developer and Declarant. All rights which are specified in this Declaration to be rights of the Developer or Declarant are mortgageable, pledgeable, assignable or transferable. Upon any exercise of rights by the holder of said mortgage, pledge, assignment or transfer by reason of a default thereunder, any one or more of such holders, its nominee or designee, any receiver appointed or mortgagee in possession pursuant to such mortgage, pledge, assignment or transfer, and any successor or assign by foreclosure or deed-in-lieu of foreclosure or otherwise shall from time to time hold or be entitled to exercise the rights of Declarant or Developer hereunder as fully as if named as such party herein. No party exercising rights as Developer or Declarant hereunder shall have or incur any liability for the acts of any other party who previously exercised or subsequently shall exercise such rights.

ARTICLE XX - GENERAL PROVISIONS

20.01 Rights of and Notice to First Mortgagee. Each Owner shall notify the Association of the name and address of his First Mortgagee or its servicing agent, if any, and shall promptly notify the Association of any change in such information. The Association shall maintain a record of such information with respect to all Units. Each First Mortgagee shall have the right to examine the books and records for the Association at any reasonable time and to have an audited statement of the Association's operations prepared for a fiscal year at its own expense. Upon the specific written request of a First Mortgagee to the Board, the First Mortgagee shall receive some or all of the following as designated in the request:

- (a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Association to the Unit Owner of the Unit covered by the First Mortgagee's first mortgage;
- (b) Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Unit Owners;
- (c) Copies of notices of meetings of the Unit Owners and the right to be represented at any such meetings by a designated representative;
- (d) Notice of any proposed action which would require the consent of a specified percentage of First Mortgagees pursuant to Section 20.13;
- (e) Notice of the decision of the Unit Owners to make any material amendment to this Declaration, the By-Laws or the articles of incorporation of the Association;

UNOFFICIAL COPY

(f) Notice of substantial damage to or destruction of any Unit (in excess of \$1,000) or any part of the Common Elements (in excess of \$10,000);

(g) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Condominium Property;

(h) Notice of any default of the Unit Owner of the Unit which is subject to the First Mortgagee's first mortgage, where such default is not cured by the Unit Owner within thirty (30) days after the giving of notice by the Association to the Unit Owner of the existence of the default;

(i) The right to be treated as an "Eligible Mortgagee" for the purpose of Section 20.13 below; or

(j) Copies of any written notice received by the Association of lapse, cancellation or material change of any insurance policy or fidelity bond carried by the Association.

The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefore shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee hereunder and in the event of multiple requests from purported First Mortgagees of the same Unit Ownership, the Association shall honor the most recent request received.

Upon written request to the Board the holder of any duly recorded mortgage or trust deed against any Unit Ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Unit Owner whose Unit is subject to such mortgage or trust deed.

20.02 Notices to Board, Association and Unit Owner. Notices provided for in this Declaration and in the Act shall be in writing, and shall be addressed to the Board or Association, or any Unit Owner, as the case may be, at 950 W. Leland Avenue, Chicago, IL 60616 (indicating thereon the number of the respective Unit if addressed to a Unit Owner), with a copy, in the case of the Board or Association, until the Initial Board is elected, to Holland & Knight LLP, 131 S. Dearborn Street, 30th Floor, Chicago, Illinois 60603, Attention: Anthony L. Frank, or at such other address as herein provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change to all Unit Owners. Any Unit Owner may also designate a different address for notices to him by giving written notice of his change of address to the Board or Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof, or if addressed to a Unit Owner, when deposited in his mailbox in the Building or at the door of his Unit in the Building. 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.

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

20.04 Binding Effect. Each grantee of the Declarant or a subsequent Unit Owner, or each purchaser under any contract for such deed of conveyance, and each tenant under a lease 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 the Condominium Property of any Unit, and shall inure to the benefit of each grantee in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

UNOFFICIAL COPY

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

20.06 Amendments.

(a) There is reserved to the Developer, or its successors or assigns, the right and power to record or cause to be recorded a special amendment ("Special Amendment") to any of the Condominium Instruments, until the latest date on which the initial membership meeting of the Unit Owners to elect the Initial Board must be held, whether or not it has actually been held, the Developer, or its successors or assigns, shall have the right to change or modify the Condominium Instruments, which change or modification shall be effective on the recording thereof, the purpose of which is (i) to bring the Condominium Instruments into compliance with the requirements of Federal National Mortgage Corporation, Federal Housing Administration, the United States Veterans Administration, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or their respective successors and assigns, (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Unit Ownerships, (iii) to bring this Declaration into compliance with the Act, (iv) to correct clerical or typographical or similar errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto or (v) to modify, combine, subdivide or otherwise alter Units or Limited Common Elements owned by Declarant; provided, however, that such supplements or amendments have no material impact on other Unit Owners, including no impact on such other Unit Owner's percentage interest in the Common Elements. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to vote in favor of, make, consent to and approve a Special Amendment on behalf of each Unit Owner and all holders of mortgages and trust deeds on the Units as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record (or cause to be made, executed and recorded) Special Amendments.

(b) If there is any Unit Owner other than the Declarant, the Condominium Instruments may be amended only upon the affirmative vote of 75% of the Unit Owners; provided, however, that if any provision of this Declaration expressly provides for different methods of amendment or different majorities of affirmative votes necessary to amend, such provisions shall control over the foregoing provisions of this Section 20.06(b). Prior to recording of any amendment to the Condominium Instruments, an affidavit, executed by an officer of the Association, shall be attached to each amendment. Such affidavit must certify that the requisite affirmative vote of Unit Owners (or of the Board, if applicable) and the approval of all mortgagees having bona fide liens of record against the Units (only if the amendment in question is such that Section 20.06(h) of this Declaration expressly requires such approval by mortgagees) has been made and given and that a copy of the amendment has been mailed by certified mail to all mortgagees having bona fide liens of record against the units no less than ten (10) days prior to the date of such affidavit.

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

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

UNOFFICIAL COPY

(e) If an omission or error or a scrivener's error in the Declaration, By-Laws or other Condominium Instrument is corrected by vote of two-thirds of the members of the Board pursuant to the authority established in Section 20.06(c) and (d), the Board, upon written petition by Unit Owners with at least 20 percent of the votes of the Association filed within 30 days of the Board action, shall call a meeting of the Unit Owners within 30 days of the filing of the petition to consider the Board action. Unless a Majority of the votes of the Unit Owners of the Association are cast at the meeting to reject the action, such action is ratified whether or not a quorum is present.

(f) The procedures for amendments set forth in Sections 20.06(c), (d), and (e) cannot be used if such an amendment would materially or adversely affect property rights of the Unit Owners unless the affected Unit Owners consent in writing. Sections 20.06(c), (d) and (e) do not restrict the powers of the Association to otherwise amend this Declaration, the By-Laws or other Condominium Instruments, but authorizes a simple process of amendment requiring a lesser vote for the purpose of correcting defects, errors, or omissions when the property rights of the Unit Owners are not materially or adversely affected.

(g) If there is an omission or error in the Declaration, By-Laws or other Condominium Instruments, which may not be corrected by an amendment procedure set forth in Sections 20.06(c) and (d), then the Circuit Court in the County in which the Condominium Property is located shall have jurisdiction to hear a petition of one or more of the Unit Owners thereon or of the Association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the Unit Owners to determine the most acceptable correction. All Unit Owners in the Association must be joined as parties to the action. Service of process on Unit Owners may be by publication, but the plaintiff shall furnish all Unit Owners not personally served with process with copies of the petition and final decree of the court by certified mail return receipt requested, at their last known addresses.

(h) The provisions of this Section 20.06 hereof may be amended, changed or modified only by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by all members of the Board, all of the Unit Owners and all mortgagees having bona fide liens of record against any Unit.

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

(j) No amendment which affects the rights, privileges or obligations of the Declarant, the Developer or the Bank (as that term is hereinafter defined), until the release of the Mortgages (as that term is hereinafter defined), or their respective agents, successors or assigns shall be effective without the prior written consent (contained on the face of any each amendment) of any such party whose rights, privileges or obligations are, or would be, so affected.

(k) Except to the extent authorized by provisions of the Act and except as otherwise specifically provided in Sections 20.06(a),(c) and (d) hereof (as qualified by Section 20.06(f)), no amendment to the Condominium Instruments shall change the boundaries of any Unit or the undivided interests in the Common Elements, the number of votes in the Association or the liability for Common Expenses appertaining to a Unit.

20.07 Severability and Inconsistent Provisions. All provisions of this Declaration, the By-Laws and other Condominium Instruments are severable. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, the By-Laws or other Condominium Instruments or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, the By-Laws or other Condominium Instruments. Except to the extent otherwise provided in this Declaration, in the event of a conflict between the provisions of this Declaration, the By-Laws or other Condominium Instruments, the conflicting provisions of this Declaration shall prevail except to the extent that such conflicting provisions of this Declaration are inconsistent with the Act.

20.08 Perpetuities and Restraints. If any of the options, privileges, covenants or rights created by this Declaration would

UNOFFICIAL COPY

otherwise be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rules 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 last to die of the now living lawful descendants of William Clinton, former President of the United States.

20.09 Liens. In the event any lien exists against two (2) or more Units and the indebtedness secured by such lien is due and payable, the Unit Owner of any such Unit so affected may remove such Unit and the undivided interest in the Common Elements appertaining thereto from such lien by payment of the proportional amount of such indebtedness attributable to such Unit. In the event such lien exists against the Units or against the Condominium Property, the amount of such proportional payment shall be computed on the basis of the percentage set forth in the Declaration. Upon payment as herein provided, it is the duty of the encumbrances to execute and deliver to the Unit Owner a release of such Unit and the undivided interest in the Common Elements appertaining thereto from such lien.

A Unit Owner shall not be solely liable for any claims, damages or judgments entered as a result of any action or inaction of the Board. Rather, each Unit Owner's liability therefore shall be limited to his proportionate share of the indebtedness as set forth herein, whether collection is sought through assessment or otherwise. A Unit Owner shall be liable for any claim, damage or judgment entered as a result of the use or operation of his Unit, or caused by his own conduct. Before conveying a Unit, the Developer shall record or furnish to the Purchaser releases of all liens affecting that Unit and its Common Element interest which the Purchaser does not expressly agree to take subject to or assume, or the Developer shall provide a surety bond or substitute collateral for or insurance against such liens. After conveyance of such Unit, no mechanics' lien shall be created against such Unit or its Common Element interest by reason of any subsequent contract by the Developer to improve or make additions to the Condominium Property.

If, as a result of work expressly authorized by the Board, a mechanics' lien claim is placed against the Condominium Property or any portion of the Condominium Property, each Unit Owner shall be deemed to have expressly authorized it and consented thereto, and shall be liable for the payment of his Unit's proportionate share of any due and payable indebtedness.

20.10 Waiver of Claims. Except to the extent specifically provided otherwise in the Act and all other applicable laws, the Declarant and their respective representatives, employees, agents and designees, shall not be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authority granted to or delegated by any of the aforesaid, or performed pursuant to this Declaration, or performed in the Declarant's (and their respective representative's, employee's, agent's and designee's) capacity as Developer, contractor, owner of the Condominium Property, Unit Owner, Occupant, the Board, management company or seller of the Condominium Property or the Units whether or not such claim: (a) shall be asserted by any Unit Owner, Occupant, the Board or the Association, or by any person or entity claiming through any of them; or (b) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (c) shall arise out of contractual obligations or out of tortious or negligent acts, errors or omissions (except in case of willful malfeasance). Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Condominium Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Unit Owner, Occupant, the Board, the Association, and their respective agents, employees, guests, and invitees, or by reason of any damage to or from any neighboring property or personal property located on or about the Condominium Property, or by reason of the failure to function, or disrepair of, any utility services.

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

20.12 Headings. The headings and captions contained herein are inserted for convenient reference only and shall not be deemed to construe or limit the Sections and Articles to which they apply.

20.13 Consent of Eligible Mortgagees.

(a) A First Mortgagee which specifically requests to be treated as Eligible Mortgagees is herein referred to as an "Eligible Mortgagee". Except to the extent otherwise herein provided, including without limitation, with respect to any

UNOFFICIAL COPY

amendment of the Declaration that, pursuant to the provisions of this Declaration, may be made by the Declarant or Developer in its sole discretion, in addition to any requirements or prerequisites provided for elsewhere in this Declaration, the consent of Eligible Mortgagees holding in the aggregate first mortgages or first trust deeds on at least 66²/₃% of the Unit Ownerships (by number), which are subject to first mortgages or first trust deed held by Eligible Mortgagees, will be required for the Association to do or permit to be done any of the following:

- (i) Adoption of an amendment to this Declaration which changes or adds to provisions of the Declaration relating to (A) voting rights; (B) assessments, assessment liens or the priority of assessment liens; (C) reserves for maintenance, repair and replacement of Common Elements; (D) responsibility for maintenance and repairs; (E) reallocation of interests in the Common Elements (including Limited Common Elements) or rights to their use; (F) redefinition of any Unit boundaries; (G) convertibility of Units into Common Elements or Common Elements into Units; (H) insurance or fidelity bond requirements; (I) leasing of Units; or (J) imposition of any restrictions on an Owner's right to sell or transfer his Unit;
- (ii) The abandonment or termination of the Condominium;
- (iii) The partition or subdivision of a Unit;
- (iv) The abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Elements (except for the granting of easements for public utilities or for other purposes consistent with the intended use of the Condominium Property and except for the encumbrance, sale or transfer of an percentage of interest in the Common Elements in connection with the encumbrance, sale or transfer of a Unit Ownership);
- (v) The sale of the Condominium Property;
- (vi) The removal of a portion of the Condominium Property from the provisions of the Act and this Declaration;
- (vii) The effectuation of a decision by the Association to terminate professional management and assume self-management of the condominium when professional management had been required hereunder or by an Eligible Mortgagee; or
- (viii) Restoration or repair of the Condominium Property (after a hazard damage or partial condemnation) in a manner other than as specified in this Declaration or the use of hazard insurance proceeds of losses to the Condominium Property (whether to Units or to the Common Element) for other than the repair, replacement or reconstruction of the damaged portion of the Condominium Property;

provided, that, such consent of Eligible Mortgagees will not be required with respect to any action under (i) through (viii) above which occurs as a result of changes in the undivided interests in the Common Elements as permitted under this Declaration.

(b) Whenever required, the consent of an Eligible Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary in writing by the Eligible Mortgagee within thirty (30) days after making the request for consent by certified or registered mail, return receipt requested.

UNOFFICIAL COPY

20.14 Land Trust Unit Owners Exculpation. In the event title to any Unit is conveyed to a land title holding trust, under the terms of which all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries, then such beneficiary or beneficiaries shall be charged with and be responsible for payment of all obligations, liens, or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against any such Unit. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Unit and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Unit.

20.15. Annexing Additional Property.

(a) The Developer reserves the right from time to time, within not more than seven years of the date of the recording of this Declaration, to annex and add to the Condominium Property, and thereby add to the Condominium created by this Declaration, all or any portion of the Additional Property by recording an amended Plat in accordance with §5 of the Act and a supplement or amendment to this Declaration (an "Amended Declaration") in accordance with §6 of the Act. No rights of any character whatever within the Additional Property attach to any Unit Owner except as to that portion of the Additional Property described in any recorded Amended Declaration annexing and adding such portion to this Declaration as part of the condominium created by this Declaration.

(b) In making the Additional Property subject to the Act and this Declaration the following shall apply:

(i) Any additions to the building located on the Parcel shall be substantially similar in design and construction to the building which are initially subject to this Declaration.

(ii) Additional Property may be made subject to the Declaration at different times; there is no limitation on the order in which Additional Property may be made subject to this Declaration, but all of the Additional Property shall eventually be made subject to this Declaration.

(iii) The maximum number of Units which may be made subject to this Declaration is 120 (of which 60 shall be Parking Spaces).

(iv) Any Added Units (as hereinafter defined) which are made subject to this Declaration pursuant to this Section 20.15 shall be compatible with or of substantially the same style, floor plan, size and quality as the Units initially made subject to this Declaration.

(b) Each Amended Declaration shall include an amended Exhibit B which shall amend Exhibit B hereto by setting forth the amended legal description of the Condominium Property to include the portion of the Additional Property annexed hereto, as well as a separate legal description of such portion. The Amended Declaration shall also contain an amended Plat, showing the boundaries of such portion and of the entire Parcel as amended and delineating the additional Units of such portion, all in accordance with §5 of the Act.

(c) Each Amended Declaration shall also include an amended Exhibit D, which shall amend Exhibit D hereto by setting forth the amended percentages of the undivided interests in the Common Elements (as amended and added to by such Amended Declaration) allocated to each Unit (including all previous Units and the additional Units added by such Amended Declaration).

(d) The percentages of undivided ownership interest in the Common Elements as amended by each Amended Declaration, and as set forth in the amended Exhibit D, shall be determined and adjusted in the following manner:

UNOFFICIAL COPY

The Common Elements as amended by such Amended Declaration shall be deemed to consist of

(i) the Common Elements as existing immediately before the recording of such Amended Declaration ("Existing Common Elements"); and

(ii) the Common Elements added by such Amended Declaration ("Added Common Elements").

The Units as amended by such Amended Declaration shall be deemed to consist of

(iii) the Units as existing immediately before the recording of such Amended Declaration ("Existing Units"); and

(iv) the Units added by such Amended Declaration ("Added Units").

The value of each of the Added Units shall be added to the aggregate value of the Existing Units, and the total thereof shall be deemed to be the new value of the Condominium Property as a whole. "Value" as used in this paragraph shall be determined by the Developer as of the date of the recording of the Amended Declaration. Such determination by the Developer shall be conclusive and binding on all Unit Owners, mortgagees, and other parties who then or in the future have any interest in the Condominium Property.

The percentages of undivided ownership interest, as amended and adjusted by the Amended Declaration, in the entire Common Elements, consisting of the Existing Common Elements plus the Added Common Elements, to be allocated among all the Units, consisting of the Existing Units plus the Added Units, shall be computed by taking as a basis the value of each Unit in relation to the value of the Condominium Property as a whole, determined as aforesaid.

The Existing Units shall be entitled to their respective percentages of ownership, as amended and adjusted and set forth in amended Exhibit D attached to the Amended Declaration, in the Added Common Elements as well as in the Existing Common Elements.

The Added Units shall be entitled to their respective percentages of ownership, as set forth in amended Exhibit D, not only in the Added Common Elements but also in the Existing Common Elements.

Each and all of the provisions of this Declaration and the Exhibits attached hereto, as amended by each such successive Amended Declaration and the amended Exhibits attached hereto shall be deemed to apply to each and all of the Units, including all such Added Units as well as all Existing Units, and to all of the Common Elements, including all such Added Common Elements as well as all Existing Common Elements.

The recording of an Amended Declaration shall not alter or affect the amounts of any liens for Common Expenses due from any Existing Unit Owners before such recording, nor the respective amounts theretofore assessed to or due from Existing Unit Owners for Common Expenses or other assessments.

(e) The lien of any mortgage encumbering any Existing Unit, together with its appurtenant percentage of undivided ownership interest in the Existing Common Elements, shall automatically be deemed to be adjusted and amended when an Amended Declaration is recorded, in accordance with the respective percentage of undivided ownership interest in the Common Elements for such Existing Unit as set forth in the amended Exhibit D attached to the Amended Declaration, and the lien of the mortgage shall automatically attach in that percentage to the Added Common Elements.

(f) Each and all of the Unit Owners of all Existing Units and of all Added Units hereafter and their respective mortgagees, grantees, heirs, administrators, executors, legal representatives, successors, and assigns, by their acceptance of any deed or mortgage or other interest in or with respect to any of such Units, shall be deemed to have expressly agreed, assented, and consented to each and all of the provisions of this Declaration with respect to the recording of any and all Amended Declarations as aforesaid that may amend, adjust, and reallocate from time to time their respective percentages of undivided ownership interest in the Common Elements, including the Existing Common Elements and Added Common Elements, from time to time as hereinabove provided; and hereby further agree to each and all of the provisions of each

UNOFFICIAL COPY

and all of said Amended Declarations that may hereafter be recorded in accordance with the foregoing provisions of this Declaration.

(g) Each and all of the Unit Owners of all Existing Units, and of all Added Units hereafter, and their respective mortgagees, grantees, heirs, administrators, executors, legal representatives, successors, and assigns, by their acceptance of any deed or mortgage or other interest in or with respect to any of such Units, further acknowledge, consent, and agree, as to each such Amended Declaration that is recorded, as follows:

(i) The portion of the Additional Property described in each such Amended Declaration shall be governed in all respects by the provisions of this Declaration.

(ii) The percentage of ownership in the Common Elements appurtenant to each Unit shall automatically be shifted and reallocated to the extent set forth in each such recorded Amended Declaration and, on the recording of each such Amended Declaration, the amount by which such percentage appurtenant to a Unit is reduced, as set forth in each such recorded Amended Declaration, shall thereby be and be deemed to be released and divested from the Unit Owner and reconveyed and reallocated among the other Unit Owners as set forth in each such recorded Amended Declaration.

(iii) Each deed, mortgage, or other instrument affecting a Unit shall be deemed given subject to the conditional limitation that the percentage of ownership in the Common Elements appurtenant to each Unit shall, on the recording of each Amended Declaration, be divested pro tanto to the reduced percentage set forth in such Amended Declaration and vested among the other Owners, mortgagees, and others owning an interest in the other Units in accordance with the terms and percentages of each such recorded Amended Declaration.

(iv) A right of revocation is hereby reserved by the grantor in each such deed, mortgage, or other instrument of a Unit to so amend and reallocate the percentage of ownership in the Common Elements appurtenant to each Unit.

(v) The percentage of ownership in the Common Elements appurtenant to each Unit shall include and be deemed to include any additional Common Elements annexed hereto by a recorded Amended Declaration, and each deed, mortgage, or other instrument affecting a Unit shall be deemed to include such additional Common Elements, and the ownership of any such Unit and lien of any such mortgage shall automatically include and attach to such additional Common Elements as such Amended Declarations are recorded.

(vi) Each Owner shall have a perpetual easement, appurtenant to his Unit, for the use of any additional Common Elements annexed thereto by and described in any recorded Amended Declaration, for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted to the Unit Owners of specific Units as may be provided in any such Amended Declaration or this Declaration and except as to any portion that may be designated as Limited Common Elements.

(vii) Each Owner by acceptance of the deed conveying his Unit agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each Amended Declaration is and shall be deemed to be in accordance with the Act, and, for purposes of this Declaration and the Act, any changes in the respective percentages of ownership in the Common Elements as set forth in each such Amended Declaration shall be deemed to be made by agreement of all Unit Owners.

(viii) The Developer reserve the right to amend this Declaration in such manner, and each Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Section 20.15 to comply with the Act as it may be amended from time to time.

(ix) The foregoing provisions of this Declaration and deeds and mortgages of the Units and Common Elements contain and will contain clauses designed to accomplish a shifting of the Common Elements. None of the provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Elements can be accomplished.

UNOFFICIAL COPY

CONSENT OF MORTGAGEE

THE UNDERSIGNED, New Century Bank (the "Bank"), holder of that certain Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing dated September 27, 2004 and recorded on October 18, 2004 with the Cook County Recorder of Deeds (the "Recorder") as Document No. 0429218177 and that certain Junior Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated December 18, 2006 and recorded with the Recorder on December 26, 2006 as Document No. 0636044079 (together, the "Mortgages") and other instruments (collectively, the "Mortgages and Other Loan Documents") securing certain loans (collectively, the "Loan"), hereby consents to the execution and recording of the attached Declaration of Condominium Ownership and By-Laws, Easements, Restrictions and Covenants for Sheridan Place in Uptown Condominium (the "Declaration"), and agrees that the Loan and the Mortgages and Other Loan Documents are subject and subordinate hereto. The address of the Bank is:

New Century Bank
363 West Ontario Street
Chicago, Illinois 60610
Attention: Yan Shkap

This Consent is intended, and shall be deemed, to constitute a notice from the Bank pursuant to Section 20.01 and that it requests to be treated as an Eligible Mortgagee pursuant to Section 20.13 hereinabove in the Declaration.

IN WITNESS WHEREOF, the Bank has caused this Consent of Mortgagee to be signed by its duly authorized officer this 10th day of May, 2007

By: [Signature]
Name: YAN SHKAP
Title: AVP

STATE OF Illinois)
COUNTY OF Cook)SS

I, A. Acosta, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that YAN SHKAP, the AVP of New Century Bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such AVP, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as such officer of said bank as his/her own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

2007 GIVEN under my hand and Notarial Seal this 10th day of May,

[Signature]
Notary Public

My commission expires 10-12-2010.

UNOFFICIAL COPY

EXHIBIT A

DECLARATION

SHERIDAN PLACE IN UPTOWN CONDOMINIUM

LEGAL DESCRIPTION OF PARCEL

LOTS 20 AND 21 IN JOSEPH A. W. REES' SUBDIVISION OF THE SOUTH 10 RODS OF THE NORTH 40 RODS OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS

P.I.N.: 14-17-236-054-0000; volume 261

COMMON ADDRESS: 250 W. Leland Avenue, Chicago, Illinois

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT 

SHERIDAN PLACE IN UPTOWN CONDOMINIUM

LEGAL DESCRIPTION OF CONDOMINIUM PROPERTY

LOTS 20 AND 21 (TAKEN AS A TRACT) IN JOSEPH A.W. REES SUBDIVISION OF THE SOUTH 10 RODS OF THE NORTH 40 RODS OF THE EAST ¼ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART DESCRIBED AS FOLLOWS: THAT PART LYING BELOW AN ELEVATION OF 17.02 FEET (CCD) DESCRIBED AS BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH 89° 16' 10" EAST, 31.11 FEET; THENCE NORTH 0° 44' 17" WEST, 53.33 FEET; THENCE SOUTH 89° 15' 43" WEST, 7.99 FEET; THENCE NORTH 0° 44' 17" WEST, 27.17 FEET; THENCE NORTH 89° 15' 43" EAST, 3.18 FEET; THENCE NORTH 0° 44' 17" WEST, 35.80 FEET; THENCE SOUTH 89° 15' 43" WEST, 12.33 FEET; THENCE SOUTH 0° 44' 17" EAST, 11.93 FEET; THENCE SOUTH 89° 15' 43" WEST, 13.79 FEET; THENCE SOUTH 0° 38' 21" EAST, 104.37 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS

PART OF P.I.N.: 14-17-206-054-0000

COMMON ADDRESS: 250 W. LELAND AVENUE, CHICAGO, ILLINOIS

Property of Cook County Clerk's Office

UNOFFICIAL COPY

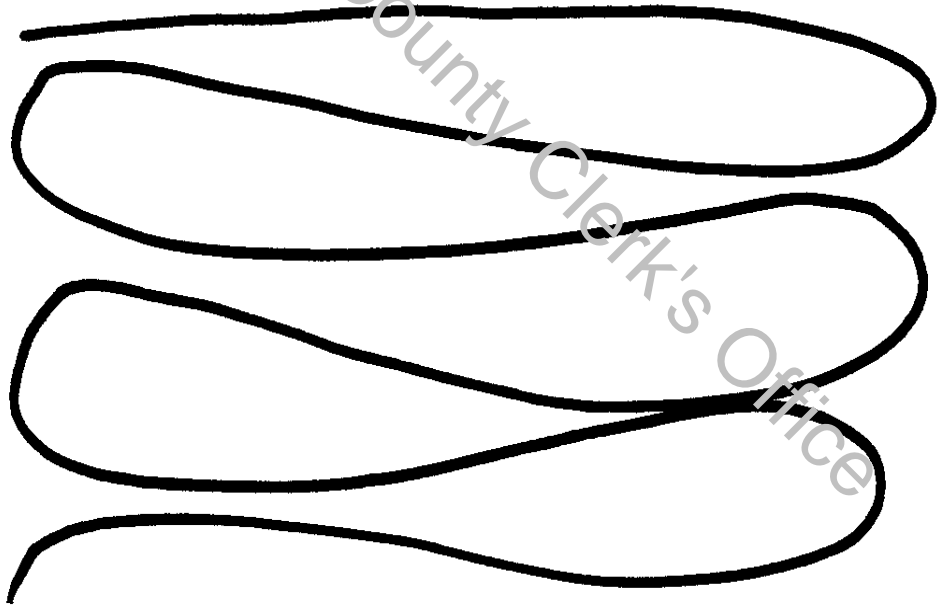
EXHIBIT *C*

DECLARATION

SHERIDAN PLACE IN UPTOWN CONDOMINIUM

PLAT

Property of Cook County Clerk's Office



UNOFFICIAL COPY**EXHIBIT D****DECLARATION****SHERIDAN PLACE IN UPTOWN CONDOMINIUM****PERCENTAGE OF OWNERSHIP OF COMMON ELEMENTS**


<u>Residential Unit No.</u>	<u>%</u>	<u>Parking Space Unit No.</u>	<u>%</u>
302	16.218 %	P-22	2.897%
305	16.974	P-41	2.897
306	19.373	P-43	2.804
311	14.170	P-49	3.136
312	18.708	P-59	<u>2.823</u>
			100.000%

Property of Cook County Clerk's Office

0811216064
UNOFFICIAL COPY
EXHIBIT

ATTACHED TO

Property of Cook County Clerk's Office



Doc#: 0811216064 Fee: \$150.00
 Eugene "Gene" Moore
 Cook County Recorder of Deeds
 Date: 04/21/2008 02:22 PM Pg: 1 of 58

54-PG
 4-X

 58-TOTAL

DOCUMENT

SEE PLAT INDEX

04-21-08