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Doc#: 0824008237 Fee: \$126.00  
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Date: 08/27/2008 02:54 PM Pg: 1 of 46

**FIRST AMENDED DECLARATION OF CONDOMINIUM OWNERSHIP  
AND OF  
EASEMENTS, RESTRICTIONS, COVENANTS  
AND BY-LAWS FOR  
1835 NORTH WINCHESTER AVENUE  
CONDOMINIUM ASSOCIATION**

THIS FIRST AMENDED DECLARATION IS MADE AND ENTERED INTO  
BY: John P. Toman and Judith F. Tengel as the President and Unit Owners of the 1835  
North Winchester Avenue Condominium Association.

**WITNESSETH:**

WHEREAS, the Units Owners hold legal title to the parcels of real estate situated  
in the City of Chicago, Cook County, Illinois (hereinafter called the "Property") and  
legally described as Units 1, 2, 3, P1 & P2 in:

LOT 64 IN THE SUBDIVISION OF BLOCK 38 SHEFFIELD'S ADDITION TO  
CHICAGO IN SECTION 31, TOWNSHIP 40 NORTH, RANGE 14, EAST OF  
THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Permanent Index Numbers: 14-31-7409-015-0000  
14-31-409-050-1001  
14-31-409-050-1002  
14-31-409-050-1003  
14-31-409-050-1004  
14-31-409-050-1005

Commonly Known As: 1835 North Winchester Avenue, Chicago, Illinois.

WHEREAS, the Unit Owners desire and intend by this First Amended  
Declaration to modify the certain easements and rights in, over and upon the said  
Property and the certain mutually beneficial; restrictions and obligations with respect to  
the use and maintenance of the said Property contains in the original Declaration ; and

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NOW THEREFORE, the President and the Unit Owners, for the purposes above set forth, DECLARE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

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

**1.01 Act.** The Condominium Property Act of the State of Illinois as amended from time to time.

**1.02 Declaration.** The instrument by which the Property was submitted to the provisions of the Act, including this First Amended Declaration and such other amendments, if any, to this instrument as may from time to time be adopted pursuant to the terms hereof.

**1.03 Parcel.** The entire tract of real estate above described, submitted to the provisions of the Act.

**1.04 Building.** The buildings located on the Parcel, forming a part of the Property and containing the Units, as shown by the surveys depicting the respective floors of said Building.

**1.05 Property.** All the land, property and space comprising the Parcel, all improvements and structures erected, constructed or contained therein, including the Building, and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, as hereinafter defined, submitted to the provisions of the Act.

**1.06 Unit.** A part of the Property within the Building including one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for residential use, or such other uses permitted by this Declaration, and more specifically described hereafter in Article II. There are presently three (3) Units in the Property identified as Units 1, 2 & 3. A Parking Unit is not a Unit for purposes of attendance or voting at meetings or other participation in governance of the Association.

**1.07 Common Elements.** All portions of the Property except the Units and Parking Units, more specifically described in Section 3.01 hereof.

**1.08 Limited Common Elements.** A portion of the Common Elements so designated in the s Declaration of on the Plat, as hereafter defined, 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 terms of this Declaration or by its nature or location is clearly intended to serve exclusively a certain Unit of Units (but less than all of the Units) or the owner or owners thereof shall be deemed a Limited Common Element.

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**1.09 Unit Ownership.** A part of the Property consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto.

**1.10 Person.** A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

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

**1.12 Occupant.** Person or Persons, other than a Unit Owner, in possession of a Unit.

**1.13 By-Laws.** The provisions for the administration of the 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 V, VI and VII hereof shall constitute the By-Laws of the Association.

**1.14 Association.** The Illinois not-for-profit corporation known as the 1835 North Winchester Avenue Condominium Association.

**1.15 Majority of the Unit Owners.** Those Unit Owners, without regard to their number, who own more than fifty percent (50%) in the aggregate of the entire undivided ownership interest in the Common Elements. Any Specified percentage of the Unit Owners shall mean those Units Owners who, in the aggregate, own such specified percentage of the entire undivided ownership interest in the Common Elements.

**1.16 Board.** The Board of Directors of the Association.

**1.17 Common Expenses.** The proposed or actual expenses affectin the Property, including reserves, if any, lawfully assessed by the Board, including, without limitation, the expenses of maintenance, repair, administration and operation of the Common Elements.

**1.18 Reserves.** Those sums paid by Unit Owners which are separately maintained by the Board for purposes specified by the Board or the Condominium Instruments.

**1.19 Developer.** John Robert Wiltgen

**1.20 Plat.** The plats of survey of the Parcel and all of the Units and Parking Units in the Property submitted to the provisions of the Act, said Plat being attached to the original Declaration as Exhibit A.

**1.21 Parking Area.** The part of the Property provide for parking automobiles.

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**1.22 Parking Unit.** A part of the Property within the Parking Area intended for the parking of a single motor vehicle. There are presently two (2) Parking Units in the Property identified as P1 & P2.

**1.23 Voting Member.** One person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Unit Owners, excluding those members of the Board of Directors designated by the Developer of Declarant.

**1.24 Declarant.** John Robert Wiltgen, and his successors and assigns.

**1.25 Garage.** The portion of the Common Elements which is designated as the "Garage" on the Plat and containing Parking Units P1 & P2.

## ARTICLE II

### UNITS

#### 2.01 Description and Ownership.

(a) All Units and Parking Units are delineated on the Plat attached to the original Declaration as Exhibit A. The legal description of each unit and Parking Unit shall consist of an identifying number or symbol of such Unit as shown on the Plat.

(b) Each Unit and Parking Unit consists of the space enclosed and bounded by the horizontal and vertical planes set forth in the delineation thereof on Exhibit A to the original Declaration including, without limitation, pipes, ducts, flues, chutes, conduits, wires, and other utility, heating, cooling or Parking Unit; and (anything herein to the contrary notwithstanding) excluding all structural components of the Building, the term "structural components: including structural columns or pipes, wires, conduits, ducts, Flues, shafts, or public utility lines running through the Unit of Parking Unit and forming a part of any system serving more than the Unit or Parking Unit, or any components of communication of master antenna systems, if any, located in the Unit, whether or not any such items shall be located in the floors, ceiling or perimeter or interior walls of the Unit. Every deed, lease, mortgage or other instrument may legally describe a Unit or Parking Unit by its identifying number or symbol as shown on Exhibit A to the original Declaration, and every such description shall be deemed good and sufficient for all purposes.

(c) Except as provided by the Act, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his Unit or Parking Unit to be separated into any tracts or parcels different from the whole Unit as shown on Exhibit A to the original Declaration.

(d) To the extent such data is available to the Declarant at the time this Declaration is filed, the Plat sets forth the measurements, elevations, locations and other data, as required by the Act, with respect to (1) the Parcel and its exterior boundaries; (2) the building and each floor there for; and (3) each Unit in the Building or Parking Unit in

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the Garage and said Unit's horizontal and vertical dimensions. However, the Declarant hereby reserves unto itself and the Developer, the right, from time to time, as further data becomes available, to amend the Plat so as to set forth the measurements, elevations, locations, and other data required by the Act, with respect to the Buildings, the Units and the Parking Units now or hereafter constructed on the Parcel.

In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, action by or through its duly authorized officers, if any, its successors, or its designee, and to the Developer, and their agents, and each of them singly, as attorney-in-fact, to amend the Plat, as described above, without notice to any Unit Owner. Each deed, mortgage or other instrument with respect to a Unit or Parking Unit, and the acceptance thereof, shall be deemed a grant of such power to each said attorneys-in-fact, and acknowledgement of and consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to amend the Plat, as described above.

**2.02 Certain Structures not Constituting Part of a Unit.** Except as a tenant in common with all other Unit Owners, no Unit Owner shall own any structural components of the of the Building or Garage including structural columns or pipes, wires, conduits, ducts, flues, shafts, or public utility lines running through his Unit or Parking Unit and forming a part of any system serving more than his Unit or Parking Unit, or any components or communication systems, if any, located in his Unit, whether or not any such items shall be located in the floors, ceiling or perimeter or interior walls of the Unit.

**2.03 Real Estate Taxes.** It is understood that real estate taxes are to be separately taxed to each Unit Owner for his Unit, Parking Unit and his corresponding percentage of ownership in the Common Elements as provided in the Act; provided, however, until such time as separate real estate tax bills are issued with respect to each Unit and Parking Unit, the real estate taxes imposed on the Property imposed on the Property shall be included in the Common Expenses assessed pursuant to this Declaration.

## ARTICLE III

### COMMON ELEMENTS

**3.01 Description.** The Common Elements shall consist of all portions of the property except the Units and Parking Units, and including the Limited Common Elements, unless otherwise expressly specified herein. The Common Elements include, without limitation, any of the following items located at the Property: the land, foundations, walls, entrances and exits, hallways, stairways, elevators, mail boxes, roof, master television antenna system (whether lease or owned), if any, pipes, ducts, flues, shafts, electrical wiring and conduits (except pipes, ducts, flues, shafts, electrical wiring and conduits situated entirely within a Unit and serving only such Unit), public utility lines, structural parts of the Building and Garage, outside walks and gas meter and water meter closet in the Garden Unit, telephone and cable television room and all other portions of the Property except the individual Units. Structural columns located within the boundaries of a Unit or Parking Unit shall be part of the Common Elements. Any

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references to "Common Elements: appearing on the Plat (except references to Limited Common Elements) shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such reference define the Common Elements in any way.

**3.02 Description. Ownership of Common Elements.** Each Unit Owner shall be entitled to the percentage of ownership in the Common Elements allocated to the respective Unit and Parking Unit owned by such Unit Owner, as set forth in Exhibit B to the original Declaration. The percentage of ownership interests set forth in Exhibit B have been computed and determined in accordance with the Act, and shall remain constant and shall not be changed, except as specifically permitted under the Act or the Declaration, without unanimous written consent of all Unit Owners and all mortgagees having bona fide liens of record against any of the Unit Ownerships. Said ownership interest in the Common Elements shall be undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The undivided percentage of ownership in the Common Elements corresponding to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit or Parking Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit or Parking Unit.

**3.03 Limited Common Elements.** The Limited Common Elements are such parts of the Common Elements serving exclusively a single Unit or adjoining Units as an inseparable appurtenance thereto, as designated as such in this Declaration, including in the Plat, or which by the nature of location thereof or by the terms of the Declaration, are clearly intended to be reserved for or for the use of one or more Units to the exclusion of other Units. The Limited Common Elements appertaining to, or designated or reserved for, or for the use of, or serving any Unit (alone or in conjunction with other Units) are hereinafter from time to time referred to as the Limited Common Elements of such Unit. The Limited Common Elements shall include, but shall not be limited to, the following: (a) the interior surface of the perimeter walls, ceilings and floors which define the boundary planes of a Unit or Parking Unit; (b) perimeter doors and windows which serve exclusively a single Unit; and (c) any system or component part thereof (including, without limitation, the furnaces, boilers, fittings, housings, hot water heaters, ducts, flues, shafts, electrical wiring, conduits, and the areas or rooms containing them) which serves a Unit exclusively; and (d) the proposed roof deck area, which shall be a Limited Common Element serving Unit 3. The owner of Unit 3 may construct and install, on that portion of the roof located directly above Unit 3, a roof deck and corresponding structure for access to said roof deck. In such event, the Unit Owner of Unit 3 shall submit for approval, to the extent that the Board deems necessary, plans and specifications prepared by a licensed Illinois Architect to the Board of 1835 North Winchester Avenue Condominium Association together with a contract with a licensed and bonded contractor who will perform the construction. Any such improvement shall require the Unit Owner to provide insurance indemnifying the association from any claims, damages or loss incurred in connection with the construction. The Unit Owner shall also provide a Waiver of Lien in favor of the Association from any Contractors upon completion of the project. The Unit Owner shall forever indemnify and defend the Association and the



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other Unit Owners from and against any and all claims arising out of the installation or maintenance of the improvement. The Association shall have access to the roof for purposes of repair or replacement, and to equipment serving the Building which is located on the roof, notwithstanding construction of the improvement. Owners of Units other than Unit 3 shall have access to the water valve on the roof notwithstanding construction of the improvement.

**3.04 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 title to 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 Owner and Occupant of any such other Unit to which such Limited Common Elements shall respectively appertain. The use of Limited Common Elements may be transferred between Unit Owners at their expense in accordance with the Act.

## ARTICLE IV

### GENERAL PROVISIONS AS TO UNITS, PARKING UNITS AND COMMON ELEMENTS

**4.01 Submission of Property to the Act.** The Property is hereby submitted to the provisions of the Condominium Property Act of the State of Illinois.

**4.02 No Severance of Ownership.** No Unit or Parking Unit Owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit or Parking Unit Ownership without including therein both his interest in the Unit or Parking 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 therein. Notwithstanding this, a Unit Owner or Parking Unit Owner may convey ownership of a Unit without conveying ownership of any Parking Unit, provided that a Parking Unit may only be owned by a Unit Owner.

#### **4.03 Encroachments and Easements.**

(a) Encroachments. In the event that (i) by reason of the construction, repair settlement or shifting of the Building or Garage, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit or Parking Unit, or any part of any Unit or Parking Unit encroaches or shall hereafter encroach upon any part of the Common Elements, or any other Unit or Parking Unit; or (ii) by reason of the design or construction of any Unit or Parking Unit, it shall be necessary or advantageous to a Unit or Parking Unit Owner to use or occupy any portion of the Common Elements for any reasonable use appurtenant to said Unit or Parking Unit, which will not unreasonably

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interfere with the use or enjoyment of the Common Elements by any other Unit or Parking Unit Owner; or (iii) by reason of the design or construction of utility and ventilation systems, any mains, pipes, ducts or conduits serving more than one Unit or Parking Unit encroach or shall hereafter encroach upon any part of any Unit or Parking Unit; then in any such case, valid easements for maintenance of such encroachment and for such use of the Common Elements are hereby established and shall exist for the benefit of such Unit or Parking Unit, or use of the Common Elements, as the case may be, so long as all or any part of the Building shall remain standing; provided, however, that in no event shall a valid easement for any encroachment or use of the Common Elements be created in favor of any Unit or Parking Unit Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Property by any other Unit or Parking Unit Owner or has been created by the Unit or Parking Unit Owner or his agent through intentional, willful or negligent conduct.

(b) Easements for Utilities and Commercial Entertainment. Illinois Bell Telephone Company, People's Gas Company, Commonwealth Edison Company and all other suppliers of utilities serving the Property and any person providing cable television or other commercial entertainment to any Unit Owners or to the Property, are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace, conduits, cables, pipes and wires and other equipment into, over, under, along and on any portion of the Common Elements for the purpose of providing the Property with utility and commercial entertainment services, together with the reasonable right of ingress and egress from the Property for said purpose; and the Declarant, Board or Association may hereafter grant other or additional easements for utility purposes and for other purposes including such easements as the Developer may from time to time request including, but not limited to, such easements as may be required to construct, keep and maintain improvements upon the Common Elements, for the benefit of the Property, over, under, along and on any portion of said Common Elements, and each Unit or Parking Unit Owner, such instruments as may be necessary to effectuate the foregoing (provided that with respect to all easements granted hereby or pursuant hereto, no Unit or Parking Unit Owner shall be deprived of, or be subjected to material interference with, the use of his Unit or Parking Unit or any Limited Common Element serving his Unit or Parking Unit, other than reasonably and temporarily). Easements are also hereby declared and granted to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines, commercial entertainment lines, components of the communications systems, if any, or structural components, which may run through the walls of a Unit and which constitute or will constitute Common Elements, whether or not such walls lie in whole or in part within the Unit boundaries. Furthermore, easements are hereby granted to the suppliers of water, electrical and gas service to the Units, meter readers, the other Unit Owners to read, maintain and repair the meters located in the Garden Unit, together with the reasonable right to ingress and egress from the Garden Unit for said purpose.

The Board may hereafter grant other or additional easements for utility or commercial entertainment purposes for the benefit of the property over, under, along and on any portion of said Common Elements, and each Unit owner and each Mortgagee of a Unit hereby grants the Board an irrevocable power of attorney coupled with an interest to



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execute, acknowledge and record in the name of such Unit Owner, such instruments as may be necessary or appropriate to effectuate the foregoing.

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 (i) to record a supplement to the Plat showing the location of any or all of such utility or commercial entertainment conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment "as built" and (ii) to record, from time to time, additional supplement or additional supplement to the Plat as aforesaid, the easement granted by this Section 4.03 (b) 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. 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 singly without the other's concurrence, as attorney-in-fact the power to record any and all such supplements.

(c) Blanket Easement in Favor of Developer and Other Parties and Other Easements. The right of the Unit Owners to use and possess the Common Elements as set forth in Section 4.05(a) hereof shall be subject to a blanket easement over the Common Elements in favor of the Declarant and Developer, and their respective representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns, for the purpose of (i) access and ingress to and egress from the Common Element, (ii) construction, installation, repair, replacement and restoration of utilities, roads, building, landscaping and any other improvements on the Parcel or any part thereof, (iii) tapping into and using sewer, water or other utility lines on or adjacent to the Parcel, (iv) the Installation and maintenance of signs advertising the residences constructed or to be constructed on the Parcel or any part thereof, and signs directing potential purchasers to the sales office and models erected in connection with such residences. The foregoing easements shall continue until such time as the right of Declarant to submit Additional Parcels to the Act have expired and neither the Declarant nor the Developer holds legal title to, or the beneficial interest in, any trust holding legal title to any Units, at which time such easements shall cease and be of no further force and effect without the necessity of any further action. The foregoing easements shall be deemed and taken to be covenants running with the land.

(d) Easements to Run with Land. All easements and rights described herein are easements appurtenant running with the land, so long as the Property is subject to provisions of this Declaration, shall remain in full force and effect, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Unit or Parking Unit Owner, purchaser, mortgagee and other person having an interest in the 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 any other part of this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to respective grantees, mortgages and trustees of such Unit Ownerships as fully and

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completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

**4.04 Parking Area.** A certain portion of the Parking Area has been divided into Parking Units P1 & P2, as delineated in Exhibit A to the original Declaration. The legal description of each parking Unit shall consist of the identifying symbol of such Parking Unit as shown on Exhibit A. Wherever reference is made to any Parking Unit in a legal instrument or otherwise, a Parking Unit may be legally described by its identifying symbol as shown on Exhibit A and every such description shall be deemed good and sufficient for all purposes. Certain Unit Owners have exercised or will hereafter exercise the right to Purchase a Parking Unit, for parking purposes only, consisting of a fee interest of a that certain Parking Unit purchased by said Unit Owners and set forth on their Deed. The term of any lease of a Parking Unit shall not exceed two (2) years. All Parking Units and access thereto shall be subject to such reasonable rules and regulations as may be established by the Board, as hereinafter provided. All Parking Unit Owners must be Unit Owners.

#### **4.05 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 and portions of the Property subject to leases or licenses made by or assigned to the Board) 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 particular Limited Common Elements serving his Unit, in common with other Unit Owners, if any, having like right thereto pursuant to this sentence and all other parties to whom such rights extend pursuant to Section 3.04(b) 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 provisions of the Act, this Declaration, and rules and regulations of the Association.

(b) Guest Privileges. The afore-described rights shall extend to the Unit Owner and the members of the immediate family and authorized occupants, tenants, guests, visitors, agents, servants, invitees, customers and licensees of the Unit Owner, subject to reasonable rules and regulations 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, nor the Declarant 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 thereto, whether or not due to negligence.

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## 4.06 Maintenance, Repairs and Replacements.

(a) The Association, at its expense, shall be responsible for the maintenance, repair, and replacement of those portions, if any, of each Unit or Parking Unit which contribute to the support of the Building or Garage excluding, however, all windows and window frames, all exterior doors and the interior surfaces of wall, ceilings 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 or Parking Unit boundaries and forming part of any system servicing more than one Unit or Parking Unit, as specified in Section 2.02 hereof, 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 or Parking Unit Owner under paragraph (b) below, or any other provisions 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 or rules and regulations of the Association.

(b) Except as otherwise provided in paragraph (a) above or paragraph (c) below, each Unit Owner shall furnish and be responsible for, at his own expense:

(i) All of the maintenance, repairs and replacements within his own Unit, all windows and window frames and all exterior doors and door frames appurtenant thereto, and all internal installations of such Unit such as refrigerators, ranges, and other kitchen appliances, lighting fixtures and other electrical fixtures and plumbing, and any portion of any other utility service facilities located within the Unit; provided, however, that such maintenance, repairs and replacements as may be required for the bring of water, gas and electricity to the Units, shall be furnished by the Board as part of the Common Expenses; and provided further that all replacement windows, window frames, exterior doors and door frames must be consistent with the aesthetic and architectural scheme of the rest of the Building, and must be approved, in advance, in writing, by the Board.

(ii) All of the decoration within his own Unit (initially and thereafter from time to time), including painting, wall papering, washing, cleaning, paneling, floor coverings, draperies, window shades, curtains, lamps and other furnishings and interior decoration. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the common walls and interior surfaces of the vertical perimeter walls, floors and ceiling of his Unit, and such Unit Owner shall maintain such portions in good condition at his sole expense as may be required from time to time.

(iii) All of the maintenance, repairs, and replacements of the Limited Common Elements benefiting his Unit, in whole or in part, except to the extent as otherwise directed by the Board or as is otherwise provided herein, shall be performed by the respective Unit Owner benefited thereby. In addition, each Unit Owner shall be individually responsible for the repair, maintenance and replacement of all door and window locks and hardware with respect to which each Unit Owner is entitled to the exclusive use. At the discretion of the Board, the Board may perform, or cause to be

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performed, such maintenance, repairs, and replacements of the Limited Common Elements and the cost thereof shall be assessed in whole or in part to Unit Owners benefited thereby, and further, at the discretion of the Board, the Board may direct such Unit Owners, in the name and for the account of such Unit Owners, to arrange for such maintenance, repairs, and replacements, to pay the cost thereof with the funds of the Unit Owner, and to procure and deliver to the Board such lien waivers and owner's contractor's or subcontractor's sworn statements as may be required to protect the Property from all mechanic's or materialmen's lien claims that may arise therefrom.

(c) In the event that any repair or replacement to the Common Elements (including Limited Common Elements) is made necessary by reason of any act or occurrence for which insurance is maintained by the Board pursuant to Section 5.08 hereof and for which insurance proceeds are available as provided in Section 8.01 hereof, the Association, at its expense to the extent of such proceeds, and subject to Section 4.07 hereof, shall be responsible for the repair or replacement of such Common Elements.

(d) Nothing herein contained shall be construed to impose a contractual liability upon the Association for maintenance, repairs and replacement, but the Association's liability shall be limited to damages resulting from negligence. The respective obligations of the Association and Unit Owners set forth in this Declaration shall not be limited, discharged or postponed by reason of the fact that any such maintenance, repair or replacement is required to cure a latent or patent defect in material or workmanship in the construction of the Building, nor because they may become entitled to proceeds under policies of insurance. In addition, and notwithstanding anything hereinabove to the contrary, no Unit Owner shall have a claim against the Board or Association (or against the Declarant or Developer) for any work ordinarily the responsibility of the Board or Association, but which the Unit Owner himself has performed or paid for, unless the same shall have been agreed to in advance by the Board or Association or the Declarant.

**4.07 Negligence of Unit Owner.** If, due to willful misconduct or negligent act or omission of a Unit Owner, or of a member of his family or household pet or of a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board.

**4.08 Joint Facilities.** To the extent that equipment, facilities and fixtures within any Unit or Units shall be connected to similar equipment, facilities or fixtures affection or serving other Units or the Common Elements, then the use thereof by individual Unit Owner shall be in all respects reasonable as it affects the other Unit Owners. The authorized representatives of the Association or the Board, or the manager or managing agent for the Building, shall be entitled to reasonable access to the individual Units or Parking Units as may be required in connection with maintenance, repairs, or replacements of or to the Common Elements or any equipment, facilities or fixtures affection or serving other Units Parking Units or the Common Elements.

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## 4.09 Additions, Alterations or Improvements.

(a) The Board may authorize and charge as a Common Expense (or in the case of Limited Common Elements may charge the Unit Owners benefited thereby) additions, alterations or improvements to the Common Elements. The cost of any such work to the Common Elements may be paid out of a special assessment.

(b) Except as otherwise provide in Section 7.01 (a) hereof, no additions, alterations or improvements shall be made by a Unit Owner to any part of the Common Elements and no additions, alterations or improvements shall be made by a Unit Owner to his Unit (where such work alters the structure of the Unit or increases the cost of insurance required to be carried by the Board hereunder) without prior written consent of the Board. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement by a Unit Owner upon the Unit Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set, or (ii) to pay the Association from time to time additional cost of maintenance and/or insurance as a result of the addition, alteration or improvement. If an addition, alteration or improvement is made by a Unit Owner without prior written consent of the Board, then the Board may, in its discretion, take any of the following actions:

(i) Require the Unit Owner to remove the addition, alteration or improvement and restore the Property to its original condition, all at the Unit Owner's expense; or

(ii) If the Unit Owner refuses or fails to properly perform the work required under (1), the Board may cause such work to be done and may charge the Unit Owner for the cost thereof as determined by the Board; or

(iii) Ratify the action taken by the Unit Owner, and the Board may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this Section.

**4.10 Street and Utilities Dedication.** The Unit Owners may by unanimous vote or consent elect to dedicate a portion of the Common Elements to a public body for use as, or in connection with, a street or utility.

## ARTICLE V

### ADMINISTRATION

#### 5.01 Administration of Property.

(a) The direction and administration of the Property shall be vested in the Association.



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(b) The business of the Association shall be managed under the direction of the Board, which may exercise all of the powers of the Association not reserved to the Unit Owners or Officers. The Board shall consist of three (3) persons designated in writing by the individual Unit Owners. A director shall have as many votes on the Board as there are Unit Owners who designated that person as a director.

(c) Each member of the Board shall be one of the individual Unit Owners or the duly-authorized representative of a Unit Owner which is a legal entity and not an individual. If the Unit Owner is a corporation, the representative may be any officer of the corporation; if a limited liability company, the representative may be a manager of the company; if a trust, the representative may be the trustee of the trust; if a land trust, the representative may be any beneficiary of the land trust; or if a group composed of all of the owners of a Unit, any member of the group. If a director fails to meet such qualifications during a term of office, he shall thereupon cease to be a director, and his place on the Board shall be deemed vacant.

**5.02 Association.** Each Unit Owner shall be a member of the Association so long as he shall continue to be a Unit Owner, and such membership shall cease automatically terminate if he ceases to be a Unit Owner. Upon the closing of the transfer of ownership of a Unit the transferee thereof shall automatically become a member of the Association. The Association shall have one class of membership. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners in accordance with the provisions contained herein.

## **5.03 Voting Rights of the Unit Owners.**

(a) Except as otherwise provided in Section 5.03 (b) herein, there shall be one person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Unit Owners. Such person shall be known (and hereinafter referred to) as a "Voting Member." Such Voting Member may be the Unit Owner or one of the Group composed of all the owners of a Unit Ownership, or be some person designated by such Unit Owner or Unit Owners or his duly authorized attorney-in-fact to act as proxy on his or their behalf and who must be a Unit Owner. Such designation shall be made in writing to the Board, shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Unit Owner or his duly authorized attorney-in-fact, shall bear the date of its execution and shall be invalid after eleven (11) months from the date of its execution unless otherwise provide in the proxy. Any or all such Unit Owners may be present at any meeting of the Voting Members but only the Voting Member may vote or take any other action as a Voting Member either in person or by proxy. If a Unit Owner is a corporation, the Voting Member may be any officer of the corporation; if a limited liability company, any manager of the company; if a partnership, any partner; if a trust, the trustee or any beneficiary of the trust; if a land trust, the person holding power of direction in the land trust or any beneficiary of the land trust; and if such a beneficiary is a corporation, limited liability company, partnership, trust or land trust, then the Voting Member exercising voting rights on behalf of the beneficiary may be any officer of the

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corporation, manager of the company, partner of the partnership, trustee or beneficiary of the trust, or person holding power of direction in or beneficiary of the land trust. The total number of votes of all Voting Members shall be one hundred (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 Ownership as set forth in Exhibit B; provided that when thirty percentage (30%) or fewer of the Units, by number, possess over fifty percent (50%) in the aggregate of the votes in the Association, any percentage vote of Unit Owners specified herein shall require the specified percentage by number of Units rather than by percentage of interest in the Common Elements allocated to Units that would otherwise be applicable. A person may be the Voting Member for more than one (1) Unit.

(b) In the event the ownership of a Unit is composed of more than one Person, if only one of the multiple owners of a Unit is present at a meeting of the Association, then such owner shall be entitled to cast all of the votes allocated to that Unit. In the event more than one owner of a Unit is present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the group of owners comprising the Unit Owner. Majority agreement shall be deemed to have occurred if any one of the multiple owners cast the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

## 5.04 Meetings of the Unit Owners.

(a) Meetings of the Unit Owners shall be held at the Property except by unanimous agreement of the Unit Owners.

(b) The presence at a meeting of the Unit Owners of persons representing at least two-thirds (2/3) of the Units shall constitute a quorum for the conduct of business at the meeting. A Voting Member not present in person but which participated in the meeting by telephone, or who has voted on a matter before the meeting in writing and consented in writing to be included, shall be included for purposes of determining a quorum at the meeting.

(c) Any action requiring the approval of the Unit Owners may be taken at a meeting of the Unit Owners where a quorum is present upon an affirmative vote by persons present and representing a majority of the Units represented at the meeting. The telephone or written vote of a Voting Member on a matter before the meeting shall be counted notwithstanding that the Voting Member is not present in person.

(d) The annual meeting of the Unit Owners shall be held on the second Tuesday of December of each year at 7:30 p.m., or on such dates and at such times as the Unit Owners may by unanimous written consent decide. Special meetings of the Unit Owners may be held upon due notice signed by persons representing at least two-thirds (2/3) of the Units.

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## 5.05 Notices of Meetings of the Unit Owners.

(a) Notice of meetings of the Unit Owners shall set forth the date, time and place of the meeting and the purpose(s) for which the meeting is to be held.

(b) Notice may be personally delivered to each Unit Owner or Voting Member or mailed to the most current address of the Unit Owner on file with the Association. Notice must be delivered or mailed not less than ten (10) nor more than thirty (30) calendar days prior to the date of the meeting. In addition, notice of the meeting must be posted at a conspicuous place in the Building at least forty-eight (48) hours prior to the meeting.

(c) Notice may be waived by a Unit Owner prior to, at or after a meeting.

## 5.06 Board of Directors.

(a) Members of the Board. The Board shall consist of three (3) directors who shall serve without compensation. Such directors shall until their replacements are elected and qualified. The Voting Members shall elect the Board. In all elections for members of the Board, each Voting Member shall be entitled to vote on a non-cumulative voting basis 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. All member of the Board shall be elected at large. Upon the expiration of the terms of office of the Board members so elected at the initial meeting and thereafter, successors shall be elected for a term of two (2) years each. The Voting Members owning at least two-thirds (2/3) of the Units may from time to time at any annual or special meeting increase or decrease the term of office of Board members, provided that the terms of at least one-third (1/3) of the persons on the Board shall expire annually. 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 meeting at which the vacancy occurs, the next annual meeting or a special meeting of the Voting Members called for such purpose. Vacancies may also be filled by the Board by a two-thirds (2/3) vote of the remaining members thereof at a special meeting of the Board, which vacancy shall be filled until the next annual meeting of the Voting Members or until a special meeting of the Voting Members called at the request of Voting Members holding twenty percent (20%) of the votes of the Association to fill the vacancy for the balance of the term. A meeting of the Voting Members shall be called for purposes of filling a vacancy on the Board no later than thirty (30) days following the Voting Members filing of a petition signed by Voting Members holding twenty percent (20%) of the votes of the Association requesting such a meeting. Except as otherwise provided in the Declaration, the Property shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the may adopt; provided, however, that (i) each Unit Owner shall be entitled to notice, in the same manner as provided in Section 5.05 hereof, of any meeting of the Board called for the purpose of considering the adoption of the proposed annual budget or any increase or establishment of an assessment; and (ii) the Board shall meet no less than four (4) times each year. Two-thirds 2/3 of the total number of members on

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the Board shall constitute a quorum. Any member of the Board may succeed himself. Any candidate for election to the Board of Managers or such candidate's representative shall have the right to be present at the counting of ballots at such election. A person may hold one or more positions as director on the Board and may cast one or more votes on the Board.

(b) **Officers.** The Board shall elect from amongst its members a President who shall preside over both its meeting and those of the Voting Members, and who shall be the chief executive officer of the Board and the Association and who shall be designated to mail and receive all notices and execute all amendments hereto as provided herein and in the Act, a Secretary who shall keep the minutes of all meetings of the Board and the Voting Members and who shall, in general, perform all the duties incident to the office of the Secretary, and a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect from amongst the members of the Board. The term of office for each officer shall be until his successor is elected and qualified. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of the Board. Any director elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by the Board. Any officer may succeed himself.

(c) **Notice of Meetings of the Board.**

(i) Notice of meetings of the Board shall set forth the date, time and place of the meeting and the purpose(s) for which the meeting is to be held.

(ii) Notice may be personally delivered to each director or mailed to the most current address of the director on file with the Association. Notice must be delivered or mailed not less than five (5) business days prior to the date of the meeting. In addition, notice of the meeting must be posted at a conspicuous place in the Building at least forty-eight (48) hours prior to the meeting.

(iii) Notice may be waived by a director prior to, at or after a meeting.

(d) **Designation to Receive Notices and Sign Amendments.** The President is hereby designated to receive all notices and execute all amendments hereto as provided herein and in the Act.

(e) All meetings of the Board except as otherwise provided by the Act, shall be open to attendance by any Unit Owner.

**5.07 General Power of the Board.** The Board shall have the following general powers.

(a) The Board may engage the services of any agent to manage the portions of the Property for which the Board is responsible pursuant to this Declaration, to the extent deemed advisable by the Board; provided, however, that any agreements for professional

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management, except as hereinafter provided, shall provide for termination by the Board without cause upon ninety (90) days written notice without the payment of a termination fee, provided for termination with cause by the Board on thirty (30) days written notice without payment for a termination fee and shall have a term not to exceed one (1) year, renewable by agreement of all the parties for successive one (1) year periods. The initial agreement for professional management may provide for a monthly rate and be subject to such terms as are consistent with competitive rates and terms prevailing in the area in which the Property is located expiring two (2) years from the date of recording of this Declaration subject to termination for cause by the Association upon thirty (30) days written notice.

(b) The Board or its agents, upon reasonable notice may enter any Unit when necessary in connection with any maintenance or construction for which the Board is responsible or to make emergency repairs as may be necessary to prevent damage to the Common Elements or to any other Unit or Units.

(c) The Board's powers hereinafter enumerated shall be limited in that the Board shall have no authority to acquire and pay for from the maintenance fund any structural alterations, capital additions to, or capital 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 or unless required for emergency repair, protection or operation of the Common Elements), without in each case the prior written approval of Unit Owners owning at least two thirds (2/3) of the Units.

(d) All agreements, contracts, deeds, leases, vouchers for payment of 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 the Board, such documents shall be signed by the Treasurer and countersigned by the President of the Board.

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

(f) The Board shall have the power and duty to provide for the designation, hiring, and removal of employees and other personnel, including lawyers and accountants, to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management, and operation of the Property, and to delegate any such powers to the manager or managing agent (and any such employees or other personnel as may be employees of the managing agent).

(g) The Board shall have the power to exercise all other powers and duties of the Board of Directors or Unit Owners as a group referred to in the Declaration or the Act. More specifically, the Board shall exercise for the Association all powers, duties and authority vested therein by law or the condominium instruments except for such powers, duties and authority reserved thereby to the members of the Association. The powers and duties of the Board shall include, but shall not be limited to, the following matters:



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(i) Operation, care, upkeep, maintenance, replacement and improvement of the Common Elements in a neat and orderly manner and in accordance with the ordinances of the City;

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

(iii) Levying of assessments;

(iv) Collection of assessment from Unit Owners;

(v) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation 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 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; however, no rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States of Section 4 of Article I of the Illinois Constitution;

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

(x) To have access to each Unit from time to time as may be necessary for the maintenance, repair or replacement of any Common Elements (to the extent the Association is responsible for such maintenance, repair or replacement) therein or accessible there from, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to other Unit or Units;

(xi) Pay real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the real property of the condominium;

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

(xiii) Assign the Association's right to future income, including the right to received Common Expenses;

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(xiv) Record 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 4.10 hereof;

(xv) Record the granting of an easement for the laying of cable television where applicable pursuant to the provisions of Section 4.03(b) hereof;

(xvi) Seek relief on behalf of all Unit Owners when authorized pursuant to subsection (c) of Section 10 of the Act 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; and

(xvii) To reasonably accommodate the needs of a handicapped Unit Owner as required by the Human Rights Act in the exercise of its powers with respect to the use of Common Elements or approval of modifications in an individual Unit.

(h) Subject to the provisions of Section 4.06 and Section 6.08 hereof, the Board for the benefit of all the Unit Owners shall acquire and shall pay from the maintenance fund hereinafter provided for, the following;

(i) Operation expenses of the Common Elements, including water, electricity and telephone and other necessary utility services for the Common Elements and (if not separately metered or charged) for the Units.

(ii) Services of any person or firm to act on behalf of the Unit Owners in connection with real estate taxes and special assessments on the Unit Ownerships, and in connection with any other matter where the respective interest of the Unit Owners are deemed by the Board to be similar and non adverse to each other. The cost of such services shall be Common Expenses.

(iii) Painting, cleaning, outside window washing not less frequently than once per calendar year, tuck pointing, maintenance, decoration, repair and replacement of the Common Elements (but not including the interior surfaces of the Units and the hallway and perimeter doors appurtenant thereto, and repair of windows and frames and screens which the Unit Owners shall paint, clean, decorate, maintain, and repair) and such furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper.

(iv) Any other materials, supplies, utilities, furniture, equipment, labor, services, maintenance, repairs or structural alterations which the Board is required to secure or pay for, pursuant to the terms of this Declaration and By-Laws or which in its opinion shall be necessary or proper for the maintenance and operation of the Property as a first-class condominium development or for the enforcement of the restrictions contained herein.

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(v) Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such liens, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of said lien or liens shall be specifically assessed to any Unit Owner.

(vi) Maintenance and repair of any Unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements or any other portion of the Building or Garage, or if a Unit Owner of any Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said Unit Owner, provided that the Board shall levy a special assessment against such Unit Owner for the cost of said maintenance or repair.

(i) Prior to the election by Voting Members of the first Board, the Declarant shall, subject to the terms of this Declaration, have the authority to lease or to grant licenses, concessions and contracts with respect to any part of the Common Elements all upon such terms as the Declarant or Developer deems appropriate. Upon election of the first Board, and thereafter, the Board by a vote of at least two-thirds (2/3) of the persons on the Board shall have the same authority as aforesaid.

(j) The Board shall have the power to bid for and purchase any Unit Ownership at a sale pursuant to a mortgage foreclosure, or a foreclosure of the lien for Common Expenses under the Act, or at a sale pursuant to an order of direction of a court or other, involuntary sale, upon the consent or approval of Unit Owners having not less than two-thirds (2/3) of the total votes.

(k) The Association shall have no authority to forebear the payment of assessments by any Unit Owner.

(l) The Board of Managers may not enter into a contract with a current board member or with a corporation or partnership in which a board member has 25% or more interest unless notice of intent to enter into the contract is given to the Unit Owners, within 20 days after a decision is made to enter into the contract and the Unit Owners are afforded an opportunity, by filing a petition, signed by 20% of the Unit Owners, for an election to approve or disapprove the contract. Such petition shall be filed within 20 days after such notice and such election shall be held within 30 days after the filing of the petition.

**5.08 Consents in Lieu of Meetings.** Any action which could be taken at a meeting of the Unit Owners or a meeting of the Board may be taken by a written consent signed all Voting Members or directors entitled to vote on the matter.

## **5.09 Insurance.**

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(a) The Board shall have the authority to and shall obtain insurance for the property as follows:

(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 Units and Parking Units. Any losses under such policies of insurance shall be payable, and all insurance proceeds recovered there under shall be applied and disbursed in accordance with the provisions of this Declaration and the Act.

(ii) Physical damage insurance on the Property (but excluding additions, alterations, improvements and betterments to the Units), subject to the following conditions:

(A) Such insurance shall be "bare wall" insurance with respect to the Units;

(B) The Property shall be insured for an amount not less than one hundred percent (100%) of its full insurable replacement cost on a blanket basis;

(C) Replacement cost values are to reviewed annually by an independent appraiser, and the insurance policy or policies shall be endorsed with an agreed amount clause. The cost of any and all appraisals for insurance purposes shall be Common Expenses; and

(D) Perils to be covered by such policies shall be no less than "all risk" or "special form" on real property and "broad form" named perils on personal property, and such other perils as may be deemed appropriate by the Board.

(iii) Commercial General Liability Insurance covering personal injury and property damage insuring against hazards of premises/operation, product and completed operations, contractual liability, personal injury (with exclusions (a) and (c) deleted), independent contractors and other extensions as deemed necessary by the Board. Such insurance shall provide limits of liability as deemed desirable by the Board, but in no event for less than One Million Dollars (\$1,000,000.00) with respect to each occurrence. Such policy shall be endorsed to cover cross-liability claims of one insured against the other.

(iv) Directors and Officers Liability insurance in such amounts as the Board shall determine to be reasonable.

(v) Such other insurance, which may include, without limitation, any or all of the following, in such amounts as the Board shall deem desirable; Plate Glass insurance; Errors and Omissions coverage for the directors of the Board; and Medical Payments coverage for members of the public (not Unit Owners) injured on the Property, without regard to liability of the Board or the Association. The premiums for the above

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describe insurance, except as otherwise provided in this Section 5.08, shall be Common Expenses.

(b) All insurance provided for in this Section 5.08 shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Illinois and holding a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A/XII according to Best's Insurance Reports or a substantially equivalent rating from a nationally recognized insurance rating service. All such policies shall provide a minimum of sixty (60) days advance notice of cancellation in writing to the insured thereunder unless such cancellation is for non-payment of premium in which case ten (10) days advance written notice shall be sufficient.

(c) All policies of insurance of the character described in clauses (i), (ii) and (iii) of Paragraph (a) of this Section 5.08; (i) shall name as insured; the Declarant, so long as it has an insurable interest; the Board, as trustees for the Unit Owners, in the percentages established in Exhibit B to the original Declaration; and shall also name as an insured the Insurance Trustee described in subparagraph 5.08(f) (ii), as the respective interest of all of such insureds may appear; (ii) shall be without contribution as respect other such policies of insurance carried individually by the Unit Owners whether such other insurance covers their respective Units or Parking Units and/or the additions and improvements made by such Unit Owners to their respective Unit of Parking Unit; (iii) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement thereof, such option shall not be exercisable in the event the Unit Owners elect to sell the Property or remove the Property from the provisions of the Act; and (iv) shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days prior written notice to the mortgagee of each Unit. Policies of insurance of the character described in clause (ii) of Paragraph (a) of this Section 5.08 may contain an endorsement extending coverage so as to include the payment of Common Expenses with respect to damage Units or Parking Units during the period of reconstruction thereof. Notwithstanding the issuance of standard mortgage clause endorsements under the policies of insurance of the character described in clauses (ii) and (iii) of Paragraph (a) of this Section 5.08, any losses under such policies shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed with the provisions of this Declaration.

(d) All policies of insurance of the character described in clauses (i), (ii) and (iii) of Paragraph (a) of this section 5.08 shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board, the Declarant, Developer, the managing agent, their respective employees and agents, and the Unit Owners and Occupants.

(e) The Association, for the benefit of the Unit Owners and the mortgagee of each Unit, shall pay the premiums and obtain a binder on the policies of insurance described in Paragraph (a) of this Section 5.08 at least thirty (30) days prior to the expiration date of the respective policies, and upon written request there for, shall notify



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the mortgagee of each Unit of such payment within ten (10) days after the date on which payment is made.

(f) Loss, if any under any policies of insurance of the character described in clauses (i), (ii) and (iii) in Paragraph (a) of this Section 5.09 shall be adjusted with the Board, and the insurance proceeds on account of any such loss shall be paid and applied to the Board, as trustee for the Association and the Unit Owners. The insurance proceeds, less actual costs, fees and expenses, if any, incurred in adjustment of the loss, shall be applied to payment of the cost of restoring the Property to substantially the same condition as it existed immediately prior to such damage or destruction

(g) Each Unit Owner shall be responsible for (i) physical damage insurance on the personal property in his Unit and his personal property elsewhere on the Property, and any addition, alterations and improvements to his Unit (whether installed by such Unit Owner or any prior Unit Owner or whether originally in his unit) (ii) his personal liability to the extent not covered by the policies of liability insurance obtained by the Board for the benefit of all the Unit Owners as above provided; and (iii) his 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. For the purposes of Section 5.08 (g) and 5.08(h) hereof, "addition, alterations and improvements" shall mean any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including without limitation carpeting, flooring, wall covering, paint and paneling, and as afore set out in preceding paragraphs.

(h) The Board shall not be responsible for obtaining physical damage insurance on any additions, alterations and improvements to a Unit or any personal property of a Unit Owner or any other insurance for which a Unit Owner is responsible pursuant to Section 5.08(g) hereof.

(i) Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, the Association, its officers, members of the Board, Declarant, Developer, The manager and managing agent of the Property, if any, and their respective employees and agents, for any damage to the Common Elements, the Units, the Parking Units or to any personal property located in the Unit, the Parking 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 or Parking Unit Owner is responsible pursuant to Section 5.08(g) hereof.

(j) Insurance required by Section 5.08(a) hereof shall be endorsed to include substantially the following clause:

"This insurance shall not be prejudiced (i) by any act or neglect of any Unit Owner or occupant of the Building when such act or neglect is not within the control of the named insured (or Unit Owners collectively), or (ii) by failure or the named insured ( or Unit Owners collectively) to comply with any warranty or

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condition with regard to any portion of the Building over which the named insured (or Unit Owners collectively) has no control”.

(k) The Board shall have the right to select substantial deductibles to the insurance coverages required or permitted under Section 5.08 if the economic savings justifies the additional risk and if permitted by law. The deductible 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.

**5.10 Liability of the Board of Directors.** 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 members and officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Unit Owners shall indemnify and hold harmless each of the members of the Board and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Unit Owners or arising out of their status as Board member or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts or judgments paid and amounts paid or received 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 of the Association may be involved by virtue of such persons 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 gross negligence or fraud in the performance of his duties as such member or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a matter determined by the Board, there is not reasonable grounds for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such member or officer. It is also intended that the liability of any Unit Owner arising out of any contract made by or other acts of the Board or officers of the Association, or out of the aforesaid indemnity in favor of the members of the Board and officers of the Association, shall be limited to such proportion of the total liability hereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements. Every agreement made by the Board on behalf of the Unit Owners shall provide that the members of the Board are acting only as agents (except as Unit Owners) and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements.

**5.11 Resale of Units.** In the event of a 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 the Document and make the

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disclosures described in and required by Section 22.1 of the Act. The Board shall be allowed to charge a reasonable fee, not to exceed the maximum amount prescribed by the Act, for providing such information.

**5.12 Additional By-Law Provisions.** Sections 4.06, 12.02, 13.08 and 13.13 of this Declaration are hereby incorporated into the By-Laws and made a part hereof as if fully set forth herein.

## ARTICLE VI

### COMMON EXPENSES-MAINTENANCE FUND

**6.01 Preparation of Estimated Budget.** On or before November 1 of each year the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and suppliers 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 adequate reserves, including, without limitations, amounts to maintain a Capital Reserve, as hereinafter defined in Section 6.02 hereof, and amounts to make repairs to and pay real estate taxes on the Common Elements. Within fifteen (15) days thereafter, the Board shall notify each Unit Owner in writing as to the amount of such estimate, with reasonable itemization thereof and containing each Unit Owner's respective assessment, provided, however, that such annual budget shall be furnished to each Unit Owner at least thirty (30) days prior to its adoption by the Board. Said "estimated cash requirement" shall be assessed to the Unit Owner according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit B attached to the original Declaration. Assessments for additions and alterations to the Common Elements or to association owned property not included in the adopted annual budget, shall be separately assessed and shall be subject to approval of two-thirds (2/3) of the total votes of all Unit Owners. If an adopted budget or any separate assessment adopted by the Board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding 115% of the sum of all regular and separate assessment payable during the preceding fiscal year, the Board, upon written petition by Unit Owners with 20% of the votes of the Association delivered to the Board within 14 days of the Board action, shall call a meeting of the Unit Owners with 20% of the votes of the Association within 30 days of the date of delivery of the petition to consider the budget or separate assessment; unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the budget or separate assessment, it is ratified. Separate assessments for expenditures relation to emergencies or mandated by law may be adopted by the Board without being subject to Unit Owner's approval or the provisions of the prior two sentences. As used herein, "emergency" means an immediate danger to the structural integrity of the Common Elements or to the life, safety or property of the Unit Owners. Any Common Expense not set forth in the budget or any increase in the assessments over the amount adopted in the budget shall be separately assessed against all Unit Owners. The Board may adopt separate assessments payable over more than the current fiscal year. On or before January 1 of the ensuing year, and the first day of each and every month of said year, each Unit Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board or as it may direct, one-twelfth (1/12) of the

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assessment made pursuant to this paragraph. On or before April 1 or each calendar year following the initial meeting of the Voting Members, the Board shall supply to all Unit Owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and 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 estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Such accounting shall, upon the written request of any Unit Owner, be prepared by a certified public accountant, in which event such accounting shall be due as soon as reasonably possible after such request. Any net shortage or excess shall be applied as an adjustment to the installments due under the current year's estimate in the succeeding six (6) months after rendering of the account subject, however, to the provisions of Section 6.02. The calendar year shall be deemed to be the fiscal year of the Association.

**6.02 Capital Reserve; Supplemental Budget.** The association shall maintain a capital reserve as part of the Association's general account solely for making capital expenditures in connection with the Common Elements (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Common Elements and equipment owned by the Association as well as periodic projections of the cost of anticipated major repairs or improvement to the Common Elements or the purchase of equipment to be used by the Association in connection with its duties hereunder. Each budget shall disclose that percentage of the annual assessment which shall be added to the Capital Reserve and each Unit Owner shall be deemed to make a capital contribution to the Association equal to such percentage multiplied by each installment of the annual assessment paid by such Unit Owner. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such portion of any contingency reserve or Capital Reserve, as applicable, which remains unallocated. If the estimated Common Expenses contained in the budget prove inadequate for any reason or in the event a nonrecurring Common Expense is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or nonrecurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a special or separate assessment shall be made to each Unit Owner for his proportionate share of such supplemental budget. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount. Any such special or separate assessment, if it involves proposed expenditures resulting in a total payment assessed to a Unit equal to the greater of (i) five (5) times the Unit's most recent monthly assessment or (ii) Three Hundred Dollars (\$300.00) shall be subject to the affirmative vote of at least two-thirds (2/3) of the total ownership of the Common Elements at a meeting specifically called for approving such special or separate assessment.

**6.03 Initial Budget.** The initial Board appointed by the Developer shall determine, and adopt, prior to the conveyance of the first Unit hereunder, the "estimated cash requirement" for the initial period commencing with the first day of the month in which the sale of the first Unit is closed and ending on December 31 of the calendar year in which such sale occurs, and shall continue to determine the "estimated cash



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requirement” for each succeeding calendar year until such time as the first Board elected hereunder takes office. Assessments shall be levied against the Unit Owners during said periods as provided in Section 6.01 of this Article.

**6.04 Failure to Prepare Dual Budget.** The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the Unit Owners 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 or any annual estimate or adjusted estimate, the Unit Owner shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period until the monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

**6.05 Records of the Association.** The managing agent or Board shall maintain the following records of the Association and make them available for examination and copying at convenient hours of weekdays by the Unit Owners or their mortgagees and their duly authorized agent or attorney:

(a) Copies of this Declaration and any amendments, Articles of Incorporation of the Association, annual reports and any rules and regulations adopted by the Association or its Board. Prior to the organization of the Association, the Developer shall maintain and make available the records set forth in this subsection (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 expense 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. The Association shall maintain these minutes for a period of not less than seven (7) years.

(d) Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to Section 15 or the General Not-for-Profit Corporation Act, approved July 19, 1943, as amended.

(e) Upon ten (10) 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.

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

Upon written request, the President shall provide to any Unit Owner or director a statement showing (a) the names and addresses of all current Unit Owners, the number of



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votes each Voting Member is entitled to cast on behalf of Unit Owners at meetings of the Unit Owners.

Upon written request, the President shall provide to any Unit Owner or director the names and addresses of all members of the Board, and the number of votes each director is entitled to cast at meetings of the Board.

**6.06 Status of Collected Funds.** All funds collected hereunder shall be held and expended for the purpose designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustment as may be required to reflect delinquent or prepaid assessments or user charges) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the percentages set forth in Exhibit B to the original Declaration.

**6.07 Start-Up Cost.** At the time the initial sale of each Unit is closed, the purchaser of the Unit shall pay to the Association an amount equal to two (2) times the first full monthly assessment for such Unit. This sum shall be used and applied for start-up costs and as a working capital fund in connection with all initial operating expenses for the Common Elements and held for future working capital needs. This payment shall not be refundable or be appointed as a credit against the Unit Owner's monthly assessment. In addition, at the time the initial sale of each Unit is closed the purchaser of a Unit shall pay to the Association an amount equal to Two Hundred and Fifty Dollars (\$250.00) to be deposited into the Capital Reserve.

**6.08 User Charges.** The Board, or the Declarant or Developer, acting pursuant to Section 13.01 hereof, may establish, and each Unit Owner shall pay, user charges to defray the expense of providing services, facilities, or benefits which may not be used equally or proportionately by all of the Unit Owners or which, in the judgment of the Board, should not be charged to every Unit Owner. Such expense may include such services and facilities provided to Unit Owners which the Board determines should not be allocated among all of the Unit Owners in the same manner as the Common Expenses. Such user charges may be added to such Unit Owner's share of the Common Expenses, as otherwise determined, and collected as a part thereof. Nothing herein shall require the establishment of user charges pursuant to this Section 6.08, and the Board or the Declarant or Developer may elect to treat all or any portion thereof as Common Expenses.

**6.09 Non-Use and abandonment.** No Unit Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Elements or abandonment of his or their Units.

**6.10 Waiver.** Provisions of this Article may be waived, in whole or in part, by unanimous written consent of the Unit Owners.

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## ARTICLE VII

### COVENANTS AND RESTRICTIONS

#### AS TO USE AND OCCUPANCY

**7.01 Permitted Uses of the Property.** The Property shall be occupied and used as follows:

(a) Each Unit (or any two or more adjoining Units used together) shall be used for any purpose permitted by applicable laws, ordinances and regulations. That part of the Common Elements separation any two or more adjoining Units which are owned by the same Unit Owner may be altered or removed to afford ingress and egress to and from such adjoining Units; provided, however, that (i) such alterations or removal shall not impair or weaken the structural integrity of any Unit or any portion of the Common Elements; (ii) the Unit Owner shall furnish to the Board not less than ten (10) days prior to the date the Unit Owner desires to commence such work all plans detailing the work to be done; (iii) the Board consents to the performance of such work; (iv) the expense of such alterations shall be paid in full by the Unit Owner making such alterations; and (v) such Unit Owner shall pay in full the expense of restoring such Common Elements to their former conditions prior to such alterations in the event such Units cease to be used together.

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

(c) Nothing shall be done or kept in any Unit or in the Common Elements serving the Units which will increase the rate of insurance on the Building or contents thereof without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Building, or contents thereof, which would be in violation of any law. No waste shall be committed in the Common Elements.

(d) In order to enhance the sound conditioning of the Building, the floor covering for all occupied Units shall meet the minimum standard as may be specified by rules and regulations of the Board.

(e) No animals shall be raised, bred or kept on the Property except for one (1) dog or cat, weighing less than ten (10) pounds, per Unit. Notwithstanding the foregoing, shall birds and fish may be kept in a Unit, provided said birds or fish are of the type customarily kept as household pets, are not kept for any commercial purpose, are kept at all times in a cage or tank designed for such purpose, do not disturb any other Unit Owner or others, and are kept in strict accordance with such rules as may be adopted by the Board from time to time. Each Unit Owner shall be responsible for picking up after

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any such animal, including without limitation removing waste deposited by such animal in any Unit, on the Limited Common Elements, or on the Common Elements.

(f) No noxious, unlawful 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 or which shall in the judgment of the Board cause unreasonable noise or disturbance to others.

(g) Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of the Building or which would structurally change the Building except as is otherwise provided herein. No Unit Owner shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board, 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 Board or the managing agent, acting in accord with the Board's direction. No Unit Owner shall overload the floors of any Unit. Waterbeds and other furnishings which may cause floor overloads shall be placed, kept or used in any Unit only in accordance with advance written Board approval.

(h) No Unit Owner shall display, hang, store or use any clothing, sheets, blankets, laundry or other articles outside his Unit, or which may be visible from the outside of his Unit (other than draperies, curtains or shades of a customary nature and appearance, subject to the rules and regulations of the Board), or paint or decorate or adorn the outside of his Unit, or install outside his Unit any canopy or awning, or outside radio or television antenna, or other equipment, fixtures or items of any kind, without the prior written permission of the Board or the managing agent, acting in accord with the Board's direction. No owner of a Unit, except as provided below, shall display, hang, store or use any sign outside of his Unit, without the prior written permission of the Board. Notwithstanding anything to the contrary contained herein. Developer reserves the right to install one television antenna on the roof of the Building. The amplifier which comprises the energy source for antenna will be located in the Building and will be connected to an individual meter in a Unit, the billing for which will be the responsibility of that Unit Owner.

(i) Articles of personal property belonging to any Unit Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall not be stored or kept in any outdoor parking area, patio, balcony, roofdeck, porchdeck or area constituting part of the Common Elements, except in storage areas specifically designated for such use by the Board or by the managing agent, acting in accord with the Board's direction; provided, however, that a reasonable amount of wood logs may be stored on the patio, balcony or porchdeck of those Units equipped with a wood burning fireplace. No recreational or camping vehicles or boats shall be parked or kept on the property.

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(j) Trash, garbage and other waste shall be disposed of in a clean and sanitary manner as prescribed from time to time in rules and regulations duly adopted by the Board; including such rules and regulations as may be prescribed from time to time with respect to the waste recycling room, if any. After emptying, the containers shall promptly be returned to the designated places in the Building.

## ARTICLE VIII

### DAMAGE, DESTRUCTION, CONDEMNATION

#### AND RESTORATION OF BUILDING

**8.01 Sufficient Insurance.** In the event the improvements forming a part of the Property, or any portion thereof, including any Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, plus Capital 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 Capital Reserve shall be applied by the Board or the payee of such insurance proceeds in payment there for; provided, however, that in the event within one hundred eight (180) days after said damage or destruction, the Unit Owners shall elect either to sell the Property as hereinafter provided in Article IX hereof or to withdraw the Property from the provisions of this Declaration, and from the provisions of the Act as therein provided, then such repair, restoration, or reconstruction shall not be undertaken. In the event such repair, restoration, or reconstruction is not undertaken, the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit B to the original Declaration, after first paying from the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the Priority of such liens.

#### **8.02 Insufficient Insurance.**

(a) If the insurance proceeds and the Capital Reserve are insufficient to reconstruct the Building and the Unit Owners and all other parties in interest do not voluntarily make provisions for reconstruction of the Building within one hundred eighty (180) days from the date of damage or destruction, then the provisions of the Act shall apply.

(b) In the case of damage or other destruction in which fewer than one-half (1/2) of the Units are rendered uninhabitable, upon the unanimous affirmative vote of not fewer than 3/4 of the Unit Owners voting at a meeting called for that purpose, the Building or other portion of the Property shall be reconstructed. The meeting shall be held within thirty (30) days following the final adjustment of insurance claims, if any; otherwise, such meeting shall be held within ninety (90) days of the occurrence of the damage or other destruction. At such meeting the Board, or its representatives, shall

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present to the members present an estimate of the cost of repair or reconstruction, and the estimated amount of necessary assessments against each Unit Owner.

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

**8.03 Eminent Domain.** In the event any portion of the Property is taken by condemnation or eminent domain proceedings, provision for withdrawal of the portions so taken from the provisions of the Act may be made by the Board. Upon the withdrawal of any Unit or portion thereof due to eminent domain, the percentage of interest in the Common Elements appurtenant to such Unit or portion so withdrawn shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be the 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 Elements will be distributed in accordance with the interests of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease. The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlement and agreements with the condemning authority for the acquisition of the Common Element or any part thereof. In the event of the total taking of the Property by eminent domain, the condemnation award available in the connection shall be divided by the Association among all Unit Owners according to each Unit Owner's percentage of ownership on the Common Elements as set forth in Exhibit B to the original Declaration, after first paying from the share of each



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Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

**8.04 Repair, Restoration or Reconstruction of the Improvements as Used in this Article.** "repair, restoration or reconstruction" of improvements means restoring the improvement to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and Common Element having the same vertical and horizontal boundaries as before, unless, if allowed by the Act, other action is approved by holders of first mortgages on Units which have more than fifty percent (50) of the votes in the Association.

## ARTICLE IX

### SALE OF THE PROPERTY

At a meeting duly called for such purpose and attended by all Unit Owners, the Unit Owners by affirmative vote of one hundred percent (100%) of the Unit Owners, may elect to sell the Property as a whole. Within (10) 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 entitled to notice under Section 13.02 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 and form may be necessary to affect such sale.

## ARTICLE X

### REMEDIES

**10.01 Violations.** Upon the occurrence of any one or more of the following events, the Board shall have the rights and remedies set forth in section 10.02 of this Declaration.

(a) Failure by a Unit Owner to pay when due any sums required to be paid by such Unit Owner pursuant to Sections 4.06, 4.07 and 4.09(b), Article VI, or other provisions of this Declaration, the thirty (30) days after written notice of such non payment shall have been given such Unit Owner; provided that such defaulting Unit Owner shall not be entitled to written notice and opportunity to cure such failure if such Unit Owner has been given three or more notices pursuant to Section 10.01(a) during the twelve (12) month period immediately preceding the first day of such failure.

(b) Violation or breach by a Unit Owner (or any occupant of his Unit) of any provisions, covenants or restrictions of the Act, Declaration, the By-Laws, contractual obligation to the Board or Association undertaken by such Unit Owner, or rules and regulations promulgated by the Board, and Continuation of such violation or breach for thirty (30) days after written notice thereof shall have been given such Unit Owner; provided that such defaulting Unit Owner shall not be entitled to written notice and

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opportunity to correct such violation or breach if such Unit Owner has been given three or more notices pursuant to this Section 10.01(b) during the twelve (12) month period immediately preceding the first day of such violation or breach.

**10.02 Remedies.** Upon the occurrence of any one or more of the events described in Section 10.01, the Board shall have the following rights and remedies:

(a) The Board shall have the right to immediate possession of the defaulting Unit Owner's unit after service by the Board on such Unit Owner, in the manner set forth in Section 13.03 hereof, of a notice to quit and deliver up possession which right may be enforced by an action for possession under "An Act in Regard to Forcible Entry and Detainer," approved February 16, 1874, as amended.

(b) For a violation or breach described in Section 10.01(b) hereof, the Board shall have the right: (i) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove or do whatever else may be necessary to correct, at the expense of the defaulting Unit Owner, any such violation or breach or the cause of such violation or breach, and the Declarant, or Developer, or their successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or (ii) to enjoin, abate, or remedy by a proceeding at law or in equity the continuance of any such violation or breach.

(c) Upon the occurrence of one of the events described in Section 10.01(a) hereof, including without limitation, failure by a Unit Owner to pay the percentage share of Common Expenses or user charges, the Board shall have a lien on the interest of the defaulting Unit Owner in his Unit Ownership in the amount of any sums due from such Unit Owner; provided, however, that such lien shall be subordinate to (a) the lien of a prior recorded first mortgage on the interest of such Unit Owner and (b) taxes, special assessments and special taxes therefore or thereafter levied by any political subdivision or municipal corporation of Illinois or other state or Federal taxes which by law are a lien on the interest of such Unit Owner prior to preexisting recorded encumbrances thereon. Except as hereafter provided, the lien provided for in this Section 10.02(c) shall not be affected by any transfer of title to the Unit Ownership. Where title to the Unit Ownership is transferred pursuant to a decree of foreclosure or by deed or assignment in lieu of foreclosure, such transfer of title shall, to the extent permitted by law extinguish the lien described in this Section 10.02(c) for any sums which became due prior to (i) the date of the transfer of title or (ii) the date on which the transferee comes into possession of the Unit, whichever occurs first. However, the transferee of a Unit Ownership shall be liable for his share of any sums with respect to which a lien against his Unit Ownership has been extinguished pursuant to the preceding sentence which are reallocated among the Unit Owners pursuant to a subsequently adopted annual revised or special assessment, and non-payment thereof by such transferee shall result in a lien against the transferee's Unit Ownership as provided in this Section 10.02(c).

(d) The Board shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing to terminate the right of said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use, or control his Unit and thereupon an

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action may be filed by the Board against the defaulting Unit Owner for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him and ordering that all the right, title and interest of said defaulting Unit Owner in the Property shall be sold at a judicial sale, upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the defaulting Unit Owner from reacquiring his interest in the Unit Ownership at such judicial sale. It shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Unit Ownership sold subject to this Declaration. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorney's fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments or other sums due hereunder or any liens, shall be paid to the defaulting Unit Owner. Upon the confirmation of such sale, the purchaser at such sale shall be entitled to a deed to the Unit Ownership and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession.

(e) In addition to or in conjunction with the remedies set forth above, the Board or its agents shall have the right to bring an action at law or in equity against the Unit Owner or occupant of the Unit as permitted by law including, without limitation, and action (i) to foreclose a lien against the Unit Ownership, (ii) for damages, injunctive relief, or specific performance, (iii) for judgment or for the payment of money and the collection thereof, (iv) for any combination of the remedies set forth in this Article or (v) for any other relief which the Board may deem necessary or appropriate. Any and all rights and remedies provided for in the Act, this Declaration, the By-Laws, contractual obligations to the Board or Association undertaken by such Unit Owner, or rules and regulations promulgated by the Board may be exercised at any time and from time to time cumulatively or otherwise by the Board in its discretion. The failure of the Board to exercise any such rights or remedies to enforce any provisions of the Declaration, the By-Laws or rules and regulations of the Board shall in no event be deemed a waiver of the right to do so thereafter.

(f) All expenses incurred by the Board in connection with any actions, proceedings or self-help in connection with the exercise of its rights and remedies under this Article, including without limitation, court cost, reasonable attorney's fees and all other fees and expenses, and all damages, together with interest thereon at the rate of eighteen percent (18%) per annum shall be charged to and assessed against the defaulting Unit Owner, and shall be added to and deemed part of his respective share of the Common Expenses, and the Board shall have a lien for all of the same upon the Unit Ownership of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon his personal property in his Unit or located elsewhere on the Property.

**10.03 Enforcement by Unit Owners.** In the event of any controversy or claim between Unit Owners, which cannot be resolved within fourteen days of receipt of notice of notice by a Unit Owner from a complaining Unit Owner, setting forth the reasons for the complaint, arising out of the provisions of this Declaration, the By-Laws, or any rules

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and regulations promulgated by the Board, shall be settled by arbitration by submitting a demand for arbitration with the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS RESPECTING MORTGAGES

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

(a) Upon request in writing to the Association identifying the name and address of the First Mortgagee or the insurer or guarantor of a recorded first mortgage or trust deed on a Unit ("Insurer or Guarantor") and the Unit number, the Association shall furnish each First Mortgagee, Insurer or Guarantor a written notice of any Unit Owners' obligations under this Declaration which are not cured within thirty (30) days. Any First Mortgagee of a Unit who comes into possession of the said Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Unit which become due prior to (i) the date of the transfer of title or (ii) the date on which the holder comes into possession of the Unit, whichever occurs first (except for any sums which are reallocated among the Unit Owners pursuant to the last sentence of Section 10.02(c) hereof).

(b) Upon request in writing, each First Mortgagee, Insurer or Guarantor shall have the right:

(i) to examine current copies of this Declaration, the By-Laws, rules and regulations and the books and records of the Association during normal business hours;

(ii) to receive, without charge and within a reasonable time after such request, any annual audited or unaudited financial statements which are prepared and distributed by the Association to the Unit Owners at the end of each of its respective fiscal years, provided, however, that in the event an audited financial statement is not available, fifty-one (51%) or more of the First Mortgagees (by number) shall be entitled to have such an audited statement prepared at their expense;

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

(iv) to receive written notice of any decision by the Unit Owners to make a material amendment to the Declaration, By-Laws contained herein or Articles of Incorporation;

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

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

(c) No provision of this Declaration or Articles of Incorporation of the Association or any similar instrument pertaining to the Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over the rights of the First Mortgagee's pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units, and/or the Common Elements, or any portion thereof or interest therein. In such event, the First Mortgagee's Insurers or Guarantors of the Units affected shall be entitled, upon specific written request, to timely written notice of any such loss.

(d) Unless the First Mortgagees of all the Units which are part of the Property have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to:

(i) by act or omission seek to abandon or terminate the condominium regime, except for abandonment provided by the Act in case of substantial loss to or condemnation of the Units and/or the Common Elements;

(ii) change the pro rata interest or obligations of any Unit Owner for (1) purposes of levying assessments or charges or allocation distributions or hazard insurance proceeds or condemnation awards and (2) determining the pro rata share of ownership of each Unit Owner in the Common Elements, except as provided in Sections 8.02 and 8.03 hereof; or

(iii) Use hazard insurance proceeds for losses to any property (whether to Units or to Common Elements) for other than the repair, replacement, or construction of such improvement, except as provided by the Act in case of substantial loss to the Units and/or the Common Elements.

(e) Unless the First Mortgagees of the individual Units representing at least fifty-one percent (51%) of the votes in the Association have given their prior written approval neither the Association nor the Unit Owners shall be entitled to do or permit to be done any of the following:

(i) Adoption of an amendment to this Declaration which (aa) change Section 10.02(c), (bb) changes Article XI or any other provisions of this Declaration which specifically grants rights to First Mortgagees, (cc) materially changes insurance and fidelity bond requirements, (dd) imposes a right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his Unit Ownership or changes the provisions concerning the leasing of Units or (ee) changes the provisions of the Declaration concerning Capital Reserves;



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(ii) The abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Elements, (except for the granting of easement for public utilities or for other purposes consistent with the intended use of the Property and except for the encumbrance, sale or transfer of the percentage of ownership in the Common Elements in connection with the encumbrance, sale or transfer of a Unit Ownership);

(iii) The sale of the Property;

(iv) The removal of a portion of the Property from the provisions of the Act and this Declaration; or

(v) The effectuation of a decision by the Association to terminate professional management and assume self-management of the condominium.

(f) Upon specific written request to the Association, each First Mortgagee, Insurer or Guarantor of a Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Elements if such damage to or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00), or if damages shall occur to a Unit in excess of One Thousand Dollars (\$1,000.00), notice of such event shall also be given.

(g) If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by condemning authority, then the First Mortgagee, Insurer or Guarantor of said Unit will be entitled to timely written notice, upon specific written request of any such proceeding or proposed acquisition and no provisions of any document will entitle the owner of a Unit or such other party to priority over such First Mortgage with respect to the distribution to such Unit Owner of the proceeds of any award or settlement.

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

## ARTICLE XII

### TRANSFER OF A UNIT

**12.01 Unrestricted Transfers.** Subject to Section 12.02 below, a Unit Owner may, without restriction under the Declaration, sell, give, devise, lease or otherwise transfer his entire Unit. Notice of any such unrestricted transfer shall be given to the Board, in the manner provided in this Declaration for the giving of notices, within five (5) days following consummation of such transfer.

**12.02 Limits on Lease Terms.** No Unit shall be leased by a Unit Owner for hotel or transient purposes or for a term less than six (6) months. Each lease of any one or more Units shall be in writing and a copy of every such lease, as and when executed,

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shall be furnished to the Board within ten (10) days after the execution thereof. The lessee under every such lease shall be bound by and subject to all of the obligations, under the Declaration and By-Laws, of the Unit Owner making such lease and the failure of the lessee to comply therewith shall constitute a default under the lease which shall be enforceable by the Board or the Association, and the lease shall be deemed to expressly so provide. The Unit Owner making such lease shall not be relieved thereby from any said obligation.

**12.03 Financing of Purchase by Association.** The Board shall have authority to make such mortgage arrangements and other financing arrangements, and to authorize such special assessment proportionately among the respective Unit Owners, as the Board may deem desirable, in order to close and consummate the purchase of lease of a Unit, or interest therein, by the Association. However, no such financing arrangement may be secured by an encumbrance on any interest in the Property other than the Unit, or interest therein to be purchased or leased, and percentage interest in the Common Elements appurtenant thereto.

## **12.04 Miscellaneous.**

(a) A transfer or lease of a Unit, or interest therein, by or to the Board or the Declarant shall not be subject to the provisions of the Article XII. This Section 12.04(a) cannot be amended or deleted without the prior written consent of the Declarant and Developer, so long as Declarant owns any Units.

(b) The Association shall hold title to or lease any Unit, pursuant to the terms hereof, in the name of the Association, or a nominee thereof delegated by the Board, for the sole benefit of all Unit Owners. The Board shall have the authority at any time to sell, lease or sublease said Unit on behalf of the Association upon such terms as the Board shall deem desirable, but in no event shall a Unit be sold for less than the amount paid by the association to purchase said Unit unless Unit Owners owning not less than seventy-five percent (75%) of the total ownership of the Common Elements first authorize the sale for such lesser amount. All of the net proceeds from such a sale, lease or sublease shall be applied in such manner as the Board shall determine.

(c) The Board may adopt rules and regulations, from time to time, not inconsistent with the provisions of this Article XII, for the purpose of implementing and effectuating said provisions.

## **ARTICLE XIII**

### **GENERAL PROVISIONS**

**13.01 Certain Right of the Declarant and Developer.** Until the time established by the Declaration for the election of the initial Board by the Unit Owners, the rights, titles, powers, privileges, trust, duties and obligations vested in or imposed upon the Board in the Act and in this Declaration shall be held and performed by the Declarant and/or Developer. If the initial Board shall not be elected by the Unit Owners

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at the time established by this Declaration, the Declarant and/or Developer shall continue in the aforesaid office for a period of thirty (30) days after written notice of its resignation is sent to all of the Unit Owners entitled to vote at such election. In exercising such rights, and the other rights reserved by the Declarant and/or the Developer pursuant to this Declaration, the Declarant and/or Developer shall not be under any disability which would otherwise be imposed by law by reason of the Declarant's and/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.

**13.02 Notice to Mortgagees.** 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 Ownership is subject to such mortgage or trust deed.

**13.03 Manner of Giving Notices.** 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 the Unit address or any member of the Board or any Unit Owner as the case may be, or at such other address as herein provided. Any Unit Owner may designate a different address or addresses 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 registered or certified mail or when delivered in person with written acknowledgement of the receipt thereof, or, if addressed to a Unit Owner, when deposited in his mailbox at such address as he may have designated pursuant herein or, if he has not so designated, at the door of his Unit.

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

**13.05 Conveyance and Leases** Each grantee of the Declarant and each subsequent grantee by the acceptance of a deed of conveyance, and each purchaser under Articles of Agreement for Deed and each tenant under a lease for a Unit, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time an interest or estate in the Property, and shall inure to the benefit of such Unit Owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

**13.06 Commercial Entertainment.** Certain principals of the Developer or of any of the entities constituting the Developer may from time to time hold interest in entities which may have interests in or rights to receive a portion of the profits arising

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from the providing of cable television, a master antenna service and other commercial entertainment services to the Property.

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

**13.08 Change, Modification or Rescission.** No provision of this Declaration affecting the rights, privileges and duties of the Declarant or Developer may be modified without its written consent. The provisions of the Article XI and Sections 10.22, 13.13 and the following provisions of Section 13.08 of the Declaration may be changed, modified, or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the President or a Vice President of the Board, and by all of the Unit Owners and all mortgagees having bona fide liens of record against all of the Unit Ownerships. Other provisions of this Declaration may be changed, modified or rescinded as provided in Section 13.13 or by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the President or a Vice President of the Board, and approved by the Unit Owners having, in the aggregate, at least sixty-seven percent (67%) of the total vote, as a meeting called for that purpose, provided, however, that all holders of first mortgages of record have been notified by certified mail of any change, modification, or rescission, and an affidavit by the Secretary of the Board certifying to such mailing is made a part of such instrument and provide further that any provisions herein which specifically grant rights to holders of first mortgages of record may be amended only with the written consent of all such holders of first mortgages. The change, modification or rescission shall be effective upon recordation of such instrument in the office of the Recorder of Cook County, Illinois; provided, however, that no such change, modification or rescission shall change the boundaries of any Unit, the allocation of percentages of ownership in the Common Elements and votes in the Association, quorum and voting requirements for auction by the Association, or liability for Common Expenses assessed against any Unit, except to the extent authorized by other provisions of the Declaration or by the Act.

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

**13.10 Perpetuities and Other Invalidity.** If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of George W. Bush, President of the United States.

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**13.11 Liberal Construction.** The provision of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first-class condominium development.

**13.12 Ownership of Land Trustee.** In the event title to any Unit Ownership is conveyed to a land title holding trust, under the terms of which all powers of management operation and control of the Unit Ownership remain vested in the trust beneficiary or beneficiaries, then the Unit Ownership under such trust and the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit Ownership. No 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 Ownership and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title of such Unit Ownership.

**13.13 Special Amendment.** Developer and/or Declarant reserve the right and power to record a special amendment ("Special Amendment") to this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell insure, or guarantee first mortgages covering Unit Ownerships, (iii) to bring this Declaration into compliance with the Act or (iv) to correct clerical or typographical errors in this Declaration or any Exhibit to the original Declaration or hereto or any supplement or amendment thereto. In the furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer and/or Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit, and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Developer and/or Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Developer and Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant or Developer no longer holds or controls title to a Unit.

**13.14 Merger.** The Association may not be merged with a successor condominium association without the approval, if applicable, of the Veteran's Administration.

**13.15 Assignments by Developer.** All rights which are specified in this Declaration to be rights of the Developer are mortgageable, pledgeable, assignable or



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transferable. Any successor to, or assignee of, the rights of the Developer hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Developer hereunder as fully as if named as such party herein. No party exercising rights as Developer hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

**13.16 Pronouns.** The pronoun "his" as used at various points in this Declaration, is not intended to convey the masculine gender alone; this usage is employed in a generic sense so as to avoid awkward grammatical situations which would likely occur due to the limitations of the English language.

**13.17 Act to Govern.** Where any provision of this First Amended Declaration or the Bylaws conflicts with any provision of the Act, as amended from time to time, this Declaration, or the Bylaws, shall be deemed modified to conform to provisions of the Act. Where any provision is required by the Act to be included in this First Amended Declaration or the Bylaws, if such provision is not explicitly included therein, it shall be deemed included by reference.

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IN WITNESS WHEREOF, John P. Toman has caused his name to be subscribed to this First Amended Declaration as President, and John P. Toman and Judith F. Tungol have caused their names to be signed to this First Amended Declaration as Unit Owners, this 21<sup>st</sup> day of Aug, 2008

\_\_\_\_\_  
John P. Toman, President

\_\_\_\_\_  
John P. Toman, Unit Owner, Units 2 & 3

J. Tungol  
\_\_\_\_\_  
Judith F. Tungol, Unit Owner, Unit 1

STATE OF ILLINOIS

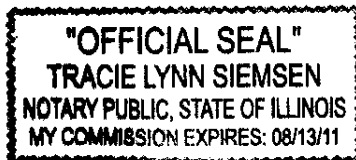
} SS.

COUNTY OF COOK

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that John P. Toman and Judith F. Tungol, personally know to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 21<sup>st</sup> day of August, 2008.

Notary Public: Tracie Lynn Siemsen



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## Exhibit "B"

### 1835 North Winchester Avenue Condominium First Amended Declaration

#### Percentage of Interest in Common Elements

<u>Unit</u>	<u>Interest</u>
1	25.76%
2	30.45%
3	41.05%
P-1	1.37%
P2	1.36
Total	100%

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