

UNOFFICIAL COPY



Doc#: 0902129008 Fee: \$158.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 01/21/2009 11:27 AM Pg: 1 of 62

**AMENDED AND
RESTATED
DECLARATION
OF CONDOMINIUM
OWNERSHIP AND OF
EASEMENTS,
RESTRICTIONS AND
COVENANTS FOR THE
SISSILLA CONDOMINIUM
ASSOCIATION**

For Use by the Recorder's Office Only

**This document prepared by and after
recording to be returned to:**

KERRY T. BARTELL, ESQ.
Kovitz Shifrin Nesbit
750 Lake Cook Road, Suite 350
Buffalo Grove, IL 60089 — (847) 537-0500

UNOFFICIAL COPY

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS FOR THE SISSILLA CONDOMINIUM ASSOCIATION

TABLE OF CONTENTS

	<u>PAGE</u>
Article I	
Definitions.....	1
1. Act.....	2
2. Declaration.....	2
3. Original Declaration.....	2
4. Parcel.....	2
5. Property.....	2
6. Unit.....	2
7. Common Elements.....	2
8. Person.....	2
9. Unit Owner.....	3
10. Majority or Majority of the Unit Owners.....	3
11. Plat.....	3
12. Condominium Instruments.....	3
13. Common Expenses.....	3
14. Reserves.....	3
15. Unit Owners Association or Association.....	3
16. Purchaser.....	4
17. Limited Common Elements.....	4
18. Building.....	4
19. Parking Area.....	4
20. Parking Space.....	4
21. Occupant.....	5
22. Voting Member.....	5
Article II	
Unit.....	5
1. Description and Ownership.....	5
2. Certain Structures Not Constituting Part of a Unit.....	5
Article III	
Common Elements.....	5
1. Description.....	5
2. Ownership of Common Elements.....	6
3. No Partition of Common Elements.....	7

UNOFFICIAL COPY

4.	Limited Common Elements.....	6
5.	Assignments of Limited Common Elements	6
6.	Transfer of Limited Common Elements.....	6
7.	Parking Spaces.....	6
8.	Use and Ownership Generally	7
9.	Owners' Rights to Use the Common Elements	7
10.	Use of Limited Common Elements	7
11.	Guest Privileges.....	8
12.	Disclaimer of Bailee Liability	8
Article IV		
	General Provisions as to Units and Common Elements	8
1.	Submission of Property to Provisions of Act	8
2.	No Severance of Ownership	8
3.	Easements.....	8
4.	Easements and Rights to Run with Land	10
5.	Public Dedication	10
Article V		
	Common Expenses, Mortgages and Real Estate Taxes	10
1.	Common Expenses	10
2.	Separate Mortgages	11
3.	Separate Real Estate Taxes.....	11
Article VI		
	Insurance.....	11
1.	Insurance	11
	(a) Property Insurance	11
	(b) General Liability Insurance	11
	(c) Fidelity Bond; Directors and Officers Coverage	12
	(d) Contiguous Units; Improvements and Betterments	12
	(e) Deductibles.....	12
	(f) Other Coverage.....	13
	(g) Insured Parties; Waiver of Subrogation	13
	(h) Primary Insurance	13
	(i) Adjustment of Losses; Distribution of Proceeds	13
	(j) Certificates of Insurance	13
	(k) Settlement of Claims.....	14
2.	Appraisal.....	14
3.	Workmen's Compensation and Other Insurance	14
4.	Waiver.....	15
5.	Notice.....	15
Article VII		
	Administration and Operation	15
1.	Administration	15

UNOFFICIAL COPY

2.	Duties and Powers of the Association.....	15
3.	Indemnity	15
4.	Board's Determination Binding	16
Article VIII		
	Maintenance, Alterations, Decorating.....	16
1.	Maintenance, Repairs and Replacements	16
2.	Limited Common Elements.....	17
3.	Alterations, Additions or Improvements	17
4.	Decorating	17
Article IX		
	Sales, Leasing or Other Alienation	17
1.	Sale or Lease.....	17
2.	Gift	18
3.	Devise.....	19
4.	Involuntary Sale.....	19
5.	Consent of Voting Members	20
6.	Release or Waiver of Option.....	20
7.	Proof of Termination of Option.....	20
8.	Financing of Purchase Under Option.....	20
9.	Title to Acquired Interest.....	21
10.	Exceptions to Board's Right to First Refusal.....	21
11.	Miscellaneous	21
12.	Records	22
Article X		
	Damage or Destruction and Restoration of Building.....	23
1.	Sufficient Insurance	23
2.	Insufficient Insurance	23
3.	Cessation of Common Expenses.....	24
Article XI		
	Eminent Domain	24
1.	Reallocation of Common Elements and Condemnation Award	24
2.	Cessation of Common Expenses.....	25
Article XII		
	Sale of the Property.....	25
Article XIII		
	By-Laws.....	26
Article XIV		
	Board of Managers	26

UNOFFICIAL COPY

1.	Board of Managers (Board of Directors)	26
2.	General Powers of the Board.....	28
Article XV		
	Members / (Unit Owners)	32
1.	Voting Rights	32
2.	Meetings	32
3.	Notices of Meetings	33
4.	Miscellaneous	33
5.	Proxies.....	33
Article XVI		
	Assessments – Maintenance Fund.....	34
1.	Estimated Annual Budget and Assessments	34
2.	Reserves and Adjustments	34
3.	Special Assessment of Increase in the Budget.....	35
4.	Failure to Prepare Estimates	35
5.	Books and Records	35
6.	Insurance	36
7.	Assessments	36
8.	Nonuse	37
9.	Priority of Liens	37
Article XVII		
	Covenants and Restrictions as to Use and Occupancy.....	37
1.	General Use.....	37
2.	Obstruction of Common Elements and Unit Maintenance ..	37
3.	Prohibited Use	37
4.	Unit Owner Insurance	38
5.	Exterior Attachments.....	38
6.	Window Treatment.....	38
7.	Floor Coverings	38
8.	Laundry Machines	38
9.	Pets, etc.....	38
10.	Nuisances	38
11.	Unsightliness	39
12.	Personal Effects.....	39
13.	Commercial Activities.....	39
14.	For Sale and For Rent Signs	39
15.	Common Elements	39
16.	Exceptions	39
17.	Disabilities.....	39
18.	Flags	40
19.	Satellite Dishes	42

UNOFFICIAL COPY

Article XVIII
 Availability of Records42

Article XIX
 Remedies for Breach of Covenants
 Restrictions and Regulations 44
 1. Abatement and Enjoinment.....44
 2. Involuntary Sale45

Article XX
 General Provisions46
 1. Notice to Mortgagees.....46
 2. Notices to Board, Association and Unit Owners46
 3. Notice to Decedent46
 4. Binding Effect.....46
 5. Waiver47
 6. Amendment47
 7. Invalidity.....47
 8. Perpetuities and Restraints.....47
 9. Liens47
 10. Release of Claims.....48
 11. Construction.....48
 12. Headings.....48
 13. Land Trust Unit Owners Exculpation48
 14. Resale of Units48
 15. Special Amendment.....51
 16. Alterations to 3rd Floor Units51

Exhibit A – Legal Description
 Exhibit B – Unit Numbers, PIN Numbers and Percentages of Ownership
 Exhibit C – Affidavit Pursuant to Illinois Condominium Property Act, Section 27(b)

UNOFFICIAL COPY

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS FOR THE SISSILLA CONDOMINIUM ASSOCIATION

WHEREAS, the Sissilla Condominium Association was created upon the recording of the Original Declaration, which document was recorded on May 1, 1980 as Document No. 25442598 with the Cook County Recorder of Deeds.

WHEREAS, the above-described Parcel together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anywise pertaining thereto, have been submitted to the provisions of the Condominium Property Act of the State of Illinois; and

WHEREAS, the Association has been established for its own benefit and for the mutual benefit of all future owners or occupants of the Property or any part thereof, and intends that all future owners, occupants, mortgagees, and any other persons hereinafter acquiring any interest in the Property shall hold same subject to certain rights, easements and privileges in, over and upon said premises and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof, hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the co-operative aspects of residence on the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

WHEREAS, this Amended and Restated Declaration is made this 4th day of June, 2008 by the Board of Directors of the Association pursuant to its power under 765 ILCS 605/27(b), more commonly referred to as Section 27(b) of the Illinois Condominium Property Act, which provides that the Board may correct errors and omissions to the Declaration by a vote of two-thirds (2/3) of its Board Members.

NOW, THEREFORE, the Association and its Owners, DECLARE as follows:

ARTICLE I

DEFINITIONS

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

UNOFFICIAL COPY

1. ACT:

The "Condominium Property Act", as amended from time to time, of the State of Illinois, 765 ILCS 605/1 et seq.

2. DECLARATION:

The Amended and Restated Declaration, as hereinafter provided and as such Declaration is from time to time amended.

3. ORIGINAL DECLARATION:

The Declaration first recorded with the Cook County Recorder of Deeds against the Property as Document No. 25442598 on May 1, 1980.

4. PARCEL:

The parcel or tract of real estate land, described in the Declaration, submitted to the provisions of the Act.

5. PROPERTY:

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

6. UNIT:

A part of the Property designed and intended for any type of independent use.

7. COMMON ELEMENTS:

All portions of the Property except the Units, including limited Common Elements unless otherwise specified.

8. PERSON:

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

UNOFFICIAL COPY

9. UNIT OWNER:

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

10. MAJORITY OR MAJORITY OF THE UNIT OWNERS:

The owners of more than one-half (1/2) in the aggregate in interest of the undivided ownership of the Common Elements. Any specified percentage of the Unit Owners means such percentage in the aggregate in interest of such undivided ownership.

11. PLAT:

A Plat or Plats of survey of the Parcel and of all units in the Property submitted to the provisions of this Act, as recorded with the Original Declaration and incorporated herein by reference only, which may consist of a three-dimensional horizontal and vertical delineation of all such Units.

12. CONDOMINIUM INSTRUMENTS:

All documents and authorized amendments thereto recorded pursuant to the provisions of the Act, including the Declaration, By-Laws and Plat.

13. COMMON EXPENSES:

The proposed or actual expenses affecting the Property, including Reserves, if any, lawfully assessed by the Board of Managers of the Unit Owners' Association.

14. RESERVES:

Those sums paid by Unit Owners which are separately maintained by the Board of Managers for purposes specified by the Board of Managers or the Condominium Instruments.

15. UNIT OWNERS ASSOCIATION OR ASSOCIATION:

The Association of all the Unit Owners, acting pursuant to By-Laws, through its duly elected Board of Managers.

UNOFFICIAL COPY

16. PURCHASER:

Any person or persons who purchased or purchases a Unit in a bonafide transaction for value.

17. LIMITED COMMON ELEMENTS:

A portion of the Common Elements so designated in the Declaration as being reserved for the use of a certain unit or units to the exclusion of other Units, including but not limited to, balconies, terraces, patios and parking spaces or facilities. The Limited Common Elements shall also include: (i) such portions of the perimeter walls, floors and ceilings, windows, doors and all fixtures and structures therein which lie outside the Unit boundaries; (ii) pipes, ducts, flues, shafts, electrical wiring or conduits or other systems or component parts thereof which serve a Unit exclusively to the extent such systems or component parts are located outside the boundaries of a Unit; (iii) any portion of the Common Elements so designated in this Declaration or on the Plat (as hereinafter defined) as being reserved for the use of a certain Unit or Units to the exclusion of other Units; and (iv) any other portion of the Common Elements which by the terms of this Declaration or by its nature or location is clearly intended to serve exclusively a certain Unit or Units (but less than all of the Units) or the owner or owners thereof including any storage lockers or sheds.

18. BUILDING:

All structures, attached or unattached, containing one or more Units.

19. PARKING AREA:

The area provided for parking automobiles as shown or referred to on the Plat.

20. PARKING SPACE:

A portion of the Parking Area intended for the parking of a single automobile.

UNOFFICIAL COPY

21. OCCUPANT:

A person, or persons, other than a Unit Owner, in possession of one or more Units.

22. VOTING MEMBER:

The person entitled to exercise all voting power in respect to each Unit Ownership.

ARTICLE II

UNIT

1. Description and Ownership. All units in the building are located on the Property and are delineated on the Original Plat and made a part of this Declaration by reference. The legal description for the parcel submitted herein to the Condominium Act is set forth in Exhibit "A" attached hereto and made a part hereof. It is understood that each unit consists of the space enclosed or bounded by the horizontal and vertical planes set forth in the delineation thereof in the Plat. Every deed, lease, mortgage or other instrument may legally describe a unit by its identifying number or symbol as shown on the Plat; and every such description shall be deemed good and sufficient for all purposes. Except as otherwise provided in the "Condominium Property Act", no unit owner shall by plat or otherwise, subdivide or in any other manner cause his unit to be separated into any tracts or parcels different from the whole unit as shown on the Plat.

2. Certain Structures Not Constituting Part of a Unit. No owner shall own any pipes, wires, conduits, public utility lines or structural components running through his unit and serving more than his unit except as a tenant in common with all other owners.

ARTICLE III

COMMON ELEMENTS

1. Description. Except as otherwise in this Declaration provided, the Common Elements shall consist of all portions of the property except the units. Without limiting the generality of the foregoing, the Common Elements shall include the land, exterior, stairways, courtyards, pipes, ducts, flues, conduits, wires and other utility installations to the outlets, and such component parts of the exterior walls, chimneys, roof overhang and portico above the entrances.

UNOFFICIAL COPY

2. Ownership of Common Elements. Each owner shall own an undivided interest in the Common Elements as a tenant in common with all the other owners of the property, and, except as otherwise limited in the Declaration, shall have the right to use Common Elements for all purposes incident to the use and occupancy of his unit as a place of residence, and such other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with his unit. The extent or amount of such ownership shall be expressed by a percentage amount, and, one determined, shall remain constant, and may not be changed without the unanimous approval of all owners. Each unit's corresponding percentage of ownership in the Common Elements as set forth in Exhibit "2" attached hereto.

3. No Partition of Common Elements. There shall be no partition of the Common Elements through judicial proceedings or otherwise until this agreement is terminated and the property is withdrawn from its terms or from the terms of any statute applicable to condominium ownership; provided, however, that if any unit ownership shall be owned by two or more co-owners as tenants in common or as joint tenants, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of said unit ownership as between such co-owners.

4. Limited Common Elements. Except as otherwise in this Declaration provided, the Limited Common Elements shall consist of all portions of the Common Elements set aside and allocated for the restricted use of particular Units. Without limiting the generality of the foregoing, the Limited Common Elements shall include the following, all of which are indicated as such on the Plat, parking area and parking spaces; which is located outside of the designated Units. All Limited Common Elements may be designated as such on the Plat or any surveys made a part of any amendment to the original Declaration as recorded.

5. Assignment of Limited Common Elements. Any parking area or parking space shall be assigned to a respective Unit.

6. Transfer of Limited Common Elements. The use of Limited Common Elements may be transferred between Unit owners at their expense, provided that the Transfer may be made only in accordance with the Condominium Instruments and the provisions of the Declaration executed by all Unit owners who are parties to the transfer and consented to by all other Unit owners who have any right to use any Limited Common Elements affected. The Amendment shall contain a certificate showing that a copy of the Amendment has been delivered to the Board of Managers. The Amendment shall contain a statement from the parties involved in the transfer which sets forth any changes in the parties' proportionate shares. If the parties cannot agree upon a reapportionment of their respective shares, the Board of Managers shall decide

UNOFFICIAL COPY

such reapportionment. No transfer shall become effective until the Amendment has been recorded.

Rights and obligations in respect to any Limited Common Element shall not be affected, nor shall any transfer of it be effective, unless a transaction is in compliance with the requirements of this Section.

7. Parking Spaces. The Parking area has been divided into three Parking spaces and are herewith declared to be limited Common Elements in favor of Units 1216-1W, 1216-2W, and 1216-3W. The said space shall be used solely for the purpose of parking one passenger type automobile and for no other purpose. The use of the said parking space shall be exclusive in the foresaid unit owner and may not be reassigned without the consent of the said unit owner. The foresaid unit owners may exchange or lease the said spaces amongst themselves or with other unit owners in the manner provided in Paragraph 6 hereof. No person not having an interest in a Unit Ownership shall have any interest in and to a parking space thereon for any purpose except as a Lessee thereof. The Condominium Board may adopt such reasonable rules and regulations with respect to the use of the Parking area as it may deem necessary or expedient. The Board may also, at its discretion, require the Unit owners enjoying the said parking spaces to pay the cost of any snow removal or any other service furnished to the Parking area.

8. Use and Ownership Generally. Each Unit Owner shall own an undivided interest in the Common Elements, in the percentage set forth in Exhibit A attached hereto and made a part hereof, as a tenant in common with all other Unit Owners. Except for (i) portions of the Common Elements which have been assigned to the Unit Owners by the Board pursuant to the provisions of the Condominium Instruments and (ii) the Limited Common Elements, each Unit Owner shall have the nonexclusive right to use the Common Elements for all purposes (including ingress and egress) incident to the use and occupancy of his Unit as a place of residence and a place for such other incidental uses permitted by the Condominium Instruments, and applicable zoning laws and regulations, which right shall be appurtenant to, and run with, his Unit.

9. Owners' Rights to Use the Common Elements. Each Owner shall have the right and easement to use the Common Elements (except the Limited Common Elements or portions occupied pursuant to leases, licenses or concessions made by the Board as permitted hereunder) in common with all other Owners, as may be required for ingress and egress to and from his respective Unit, and for such other purposes not prohibited hereunder.

10. Use of Limited Common Elements. Each Unit Owner and occupant shall have the right to (i) the exclusive use and possession of the Limited Common Elements contiguous to and serving only the Unit of such Unit Owner or Occupant which right shall be appurtenant to, and run with the title to such Unit

UNOFFICIAL COPY

and shall not be separated from such unit, which shall specifically include any roof-top decks which have been designated as limited Common Elements for the exclusive use of particular Unit Owners; and (ii) 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 or 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, and (iii) the exclusive use and possession of any Limited Common Elements so designated and allocated in this Declaration or the Plat.

11. Guest Privileges. The rights described in this Article in and to the Common Elements (and the Limited Common Elements) shall extend to the Unit Owners and members of their immediate families and authorized Occupants, tenants, guests, visitors, agents, servants, invitees, customers and licensees of the Unit Owners, subject to reasonable rules and regulations of the Board with respect thereto.

12. Disclaimer of Bailee Liability. Notwithstanding anything to the contrary contained in this Declaration, neither the Board, the Association, nor any Unit Owner 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.

ARTICLE IV

GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS

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

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

3. Easements. (a) Encroachments. If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any portion of the Common Elements or any other Unit as a result of the construction, repair, reconstruction, settlement or shifting of any building, a valid mutual easement shall exist in favor of the owners of the Common Elements and the respective Unit Owners involved to the extent of the encroachment. A valid easement shall

UNOFFICIAL COPY

not exist in favor of any Unit owner who creates an encroachment by his intentional, willful or negligent conduct or that of his agent.

(b) Utility Easements. (i) The Illinois Bell Telephone Company, Commonwealth Edison Company and all other public utilities serving the Property are hereby granted the right to lay, construct, renew, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment related to their service to the Property, into and through the Common Elements and the Units, where reasonably necessary for the purpose of providing utility services to the Property.

(ii) An easement is hereby granted in favor of the Association for access through any Unit to the extent reasonably required to read common electric meters and water meters, and to service common electric and water lines which provide electric and water service to the Building. The foregoing easement is limited by the requirement hereby imposed upon the Association to provide reasonable notice to the Unit Owner and Occupant of such Unit prior to obtaining access to the Unit; provided, however, such notice shall not be required in the case of emergency circumstances.

(iii) The Association hereby reserves to itself and their respective successors and assigns, the right, without notice to, or the consent of, any Unit Owner or mortgagee of a Unit: (A) to record a supplement to the Plat showing the location of any or all such utility or commercial entertainment conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment "as built" and (B) to record, from time to time, additional supplements, showing additions, modifications and deletions to any or all of such conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment. Once the location of the easement to any such utility or other entity is shown by any supplement or additional supplement to the Plat as aforesaid, the easement granted by this Section of Article IV 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 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 to do or cause the foregoing to be done. The acceptance of each deed, mortgage, trust deed or other instrument with respect to a Unit shall be deemed a grant to each said attorney-in-fact of the power to record any and all such supplements.

(iv) Each Unit Owner hereby grants the Board or Association an irrevocable power of attorney coupled with an interest to execute, acknowledge and record for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing (provided that with respect to all easements granted hereby or pursuant hereto, no Unit Owner shall

UNOFFICIAL COPY

be deprived of, or be subjected to material interference with, the use of his Unit or any Limited Common Element serving this Unit, other than reasonably and temporarily). Easements are also hereby declared and granted to install, lay, operate, maintain, repair and replace any pipes, wire, 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 to the Units to maintain and repair the meter located in a Unit, together with the reasonable right of ingress to and egress from the Unit for said purpose.

(c) Storage Area. The storage area for the Unit Owners' personal property in the Building outside of the respective Units shall be part of the Common Elements, and the exclusive use and possession of such area shall be allocated among the respective Unit Owners in such manner and subject to such rules and regulations as the Trustee or the Board may prescribe. Each Unit Owner shall be responsible for his personal property in such storage area. The Board and the Association shall not be considered the bailee of such personal property and shall not be responsible for any loss or damages thereto whether or not due to the negligence of the Board and/or the Association.

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

5. Public Dedication. Upon approval by two-thirds (2/3) of the Unit Owners, portions of the Common Elements may be dedicated to a public body for purposes of streets or utilities. Any action pursuant to this Section of this Article IV must be taken at a meeting of Unit Owners duly called for that purpose.

ARTICLE V

COMMON EXPENSES, MORTGAGES AND REAL ESTATE TAXES

1. Common Expenses. Each Unit owner shall pay his proportionate share of the common expenses of administration, maintenance and repair of the

UNOFFICIAL COPY

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

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

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

ARTICLE VI

INSURANCE

1. Insurance. The Board of Directors shall obtain the following:

(a) Property Insurance. Property insurance (i) on the Common Elements and the units, including the limited Common Elements and except as otherwise determined by the Board of Directors, the bare walls, floors, and ceilings of the unit; (ii) providing coverage for special form causes of loss, and; (iii) in a total amount of not less than the full insurable replacement cost or the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date.

(b) General Liability Insurance. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of \$1,000,000, or a greater amount deemed sufficient in the judgment of the Board, insuring the Board, the Association, the management agent, and their respective employees and agents and all persons acting as agents. The Unit Owners must

UNOFFICIAL COPY

be included as additional insured parties, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance must cover claims of one or more insured parties against other insured parties.

(c) Fidelity Bond; Directors and Officers Coverage.

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

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

(d) Contiguous Units; Improvements and Betterments. The insurance maintained by the Association must include the Units, the Limited Common Elements except as otherwise determined by the Board of Directors, and the Common Elements. The insurance need not cover improvements and betterments to the units installed by Unit Owners, but if improvements and betterments are covered, any increased cost may be assessed by the Association against the Units affected.

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

(e) Deductibles. The Board of Directors of the Association may, in the case of a claim for damage to a Unit or the Common Elements, (i) pay the deductible amount as a common expense; (ii) after notice and an opportunity for a hearing, assess the deductible amount against the Owners who caused the damage or from whose Units the damage or cause of loss originated; or (iii) require the Unit Owners of the Units affected to pay the deductible amount.

UNOFFICIAL COPY

(f) Other Coverage. The Association may carry any other insurance, including workers compensation, employment practices, environmental hazards, and equipment breakdown, the Board of Directors considers appropriate to protect the Association, the Unit Owners, officers, Directors or agents of the Association and as more fully provided in this Declaration.

(g) Insured Parties; Waiver of Subrogation. Insurance policies carried pursuant to subsections (a) and (b) must include each of the following provisions.

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

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

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

(h) Primary Insurance. If at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same property covered by the policy, the Association's policy is primary insurance.

(i) Adjustment of Losses; Distribution of Proceeds. Any loss covered by the property policy must be adjusted by and with the Association. The insurance proceeds for that loss must be payable to the Association, or to an insurance trustee designated by the Association for that purpose. The insurance trustee or the Association must hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged Common Elements, the bare walls, ceilings and floors of the Units, and then to any improvements and betterments the Association may insure. Unit Owners are not entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the Common Elements and Units have been completed repaired or restored or the Association has been terminated as Trustee.

(j) Certificates of Insurance. Contractors and vendors (except public utilities) doing business with a condominium association under contracts exceeding \$10,000.00 per year must provide certificates

UNOFFICIAL COPY

of insurance naming the Association, its Board of Directors and its managing agent as additional insured parties.

(k) Settlement of Claims. Any insurer defending a liability claim against a condominium association must notify the Association of the terms of the settlement no less than ten (10) days before settling the claim. The Association may not veto the settlement unless otherwise provided by contract or statute.

(l) A Unit Owner shall be liable for any claim, damage or judgment entered as a result of the use or operation of his Unit or caused by his own conduct. Each Unit Owner shall be responsible for obtaining his own insurance on the contents of his Unit and personal property therein, and personal property stored elsewhere on the Property. In addition, in the event a Unit Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that his liability, loss or damage by fire or other hazards above and beyond the extent that his liability, loss or damage is covered by the liability insurance and insurance against loss or damage by fire or other hazards obtained by the Board for all of the Unit Owners a part of the Common Expenses, such Unit Owner may, at his option and expense, obtain additional insurance thereagainst.

Each Unit owner shall inform the Board in writing of additions, alterations or improvements made by, said Unit Owner to his Unit and the value thereof which value shall be included in the full replacement insurable cost for insurance purposes. Any increase in premium resulting from reported improvements shall be against the unit having been improved. If a Unit Owner fails to inform the Board as provided above and a penalty is assessed in the adjustment of loss settlement, the Unit owner shall be responsible for such penalty.

2. Appraisal. The full, insurable replacement cost of the Property, including the Units and Common Elements shall be determined from time to time (but not less frequently than once in any twelvemonth period) by the Board. The Board shall have the authority to obtain an appraisal by a reputable appraisal company as selected by the Board. The cost of such appraisal shall be a common expense.

3. Workmen's Compensation and Other Insurance. The Board of Managers shall acquire, as a common expense, Workmen's Compensation Insurance as may be necessary to comply with applicable laws and such other forms of insurance as the Board, in its judgment, shall elect to obtain, including, but not limited to insurance for the Association, its officers and manager against liability from good faith actions allegedly beyond the scope of their authority.

UNOFFICIAL COPY

4. Waiver. Each Unit Owner hereby waives and releases and all claims which he may have against any other Unit Owner, the Association, its officers, members of the Board, the manager and managing agent of the Building, if any, and their respective employees and agents, for damage to the Common Elements, the Units, or to any personal property located in the Units 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.

5. Notice. The Board of Managers shall notify insured persons concerning the cancellation of insurance obtained pursuant to the terms of this Article.

ARTICLE VII

ADMINISTRATION AND OPERATION

1. Administration. The administration of the Property shall be vested in the Board of Managers consisting of the number of persons, and who shall be elected in the manner provided in the By-Laws contained herein, as Articles XIV, XV, XVI, XVII and XVIII. The Association has and shall cause to be incorporated under the laws of the State of Illinois, a not-for-profit corporation (hereinafter referred to as "the Association") under the name THE SISSILLA CONDOMINIUM ASSOCIATION, or a similar name, which corporation shall be the governing body for all the Unit owners for the maintenance, repair, replacement, administration and operation of the Common Elements and for such other purposes as are hereinafter provided. The Board of Directors of the Association shall be deemed to be the Board of Managers referred to herein and in the Act.

2. Duties and Powers of the Association. The Unit Owners Association is responsible for the overall administration of the Property through its duly elected Board of Managers. The duties and powers of the Association and its Board shall be those set forth in its Articles of Incorporation, the By-Laws and this Declaration; provided however that, (i) the terms and provisions of the Act shall control in the event of any inconsistency between the Act, on the one hand, and this Declaration, the Articles of Incorporation and the By-Laws on the other hand, (ii) the terms and provisions of this Declaration shall control in the event of any inconsistency between this Declaration, on the one hand, and the Articles of Incorporation and the By-Laws on the other hand.

3. Indemnity. The members of the Board and the officers thereof or the Association shall not be liable to the Unit Owners for any mistake of judgment, or any acts or omissions made in good faith as such members or officers on behalf of the Unit Owners or the Association unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. The liability of any Unit Owner arising out of any contract made by such members or officers or out of the aforesaid indemnity shall be limited to

UNOFFICIAL COPY

such proportion of the total liability thereunder as his percentage interest in the Common Elements bears to the total percentage interest of all the Unit owners in the Common Elements. Each agreement made by such members or officers or by the managing agent on behalf of the Unit Owners or the Association shall be executed by such members or officers or the managing agent, as the case may be, as agents for the Unit Owners or for the Association.

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

ARTICLE VIII

MAINTENANCE, ALTERATIONS, DECORATING

1. Maintenance, Repairs and Replacements. (a) Each Unit Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit. Maintenance, repairs and replacements of the Common Elements shall be furnished by the Board as part of the common expenses, subject to the rules and regulations of the Board and except as provided in Article XIV, Section 2(l).

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

(c) Whenever the Board shall determine, in its discretion, that any maintenance or repair of any unit is necessary to protect the Common Elements or any other portion of the Building, the Board may cause a written notice of the necessity for such maintenance or repair to be served upon such Unit Owner, which notice may be served by delivering a copy thereof to any occupant of such Unit, or by mailing the same by certified or registered mail addressed to the owner at the Unit. If such Unit Owner fails or refuses to perform any such maintenance or repair within a reasonable time stated in the notice (or any extension thereof approved by the Board), the Board may cause such maintenance and repair to be performed at the expense of such unit Owner.

(d) If, due to the act or neglect of a Unit owner, or of a member of his family or household pet or of a guest or other authorized occupant or visitor

UNOFFICIAL COPY

of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Boards to the extent not covered by insurance.

(e) The Board shall have exclusive authority to take, or refrain from taking, any action pursuant to this Article VIII, Section 1. All expenses which, pursuant to this Section 1, are chargeable to any Unit Owner, may be specifically assessed to such Unit Owner and shall be payable by such Unit owner as prescribed by the Board.

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

3. Alterations, Additions or Improvements. No alterations of any Common Elements or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Board. Any Unit Owner may make alterations, additions and improvements within his Unit without the prior written approval of the Board, but in any event such unit Owner shall be responsible for any damage to other Units, the Common Elements, or the Property as a result of such alterations, additions or improvements. Nothing shall be done in any, Unit, or in, on or to the Common Elements which will impair the structural integrity of the Building or which would structurally change the Building.

4. Decorating. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating within his own Unit from time to time, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. The use of and the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Board. Decorating of the Common Elements (other than interior surfaces within the Units as above provided), and any redecorating of Units to the extent made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Elements by the Board, shall be furnished by the Board as part of the common expenses.

ARTICLE IX

SALE, LEASING OR OTHER ALIENATION

1. Sale or Lease. Any Unit Owner who wishes to sell or lease his Unit Ownership (or any, lessee of any Unit wishing to assign or sublease such Unit)

UNOFFICIAL COPY

shall give to the Board not less than thirty (30) days prior written notice of his intent to sell or lease and subsequently, the terms of any contract to sell or lease, entered into subject to the Board's option as set forth hereinafter together with a copy of such contract, the name, address and financial and character references of the proposed purchaser or lessee and such other information concerning the proposed purchaser or lessee as the Board may reasonably require. The members of the Board acting on behalf of the other Unit Owners shall at all times have the first right and option to purchase or lease such Unit ownership upon the same terms, which option shall be exercisable for a period of thirty (30) days following the date of receipt of such notice of contract. If said option is not exercised by the Board within said thirty (30) days, the Unit owner (or lessee) may, at the expiration of said thirty (30) day period and, at any time within ninety (90) days after the expiration of said period, proceed to consummate the sale (or sublease or assignment of) such Unit Ownership to the proposed purchaser or lessee named in such notice upon the terms specified therein. If the Unit Owner (or lessee) fails to close said proposed sale or lease transaction within said ninety (90) days, the Unit Ownership shall again become subject to the Board's right of first refusal as herein provided.

2. Gift. Any Unit Owner who wishes to make a gift of his Unit Ownership or any interest therein, to any person other than a permitted party under Section 10 of this Article IX shall give to the Board not less than ninety (90) days written notice of his or her intent to make such gift prior to the contemplated date thereof, together with the name, address and financial and character references of the intended donee and such other information concerning the intended donees as the Board may reasonably require. If the gift to such a party is not consented to by the Board, and the Unit owner insists on making said gift, the members of the Board acting on behalf of the other Unit Owners, shall at all times have the first right and option to purchase such Unit Ownership or interest therein for cash at fair market value determined by arbitration as hereinafter provided, which option shall be exercisable until the date of expiration as provided herein. In the event that the Board exercises said option and the parties cannot arrive at an agreed price, then within fifteen (15) days after receipt of a written notice by the Board, the Board and the Unit Owner desiring to make such gift shall each select a qualified real estate appraiser. The two appraisers so selected shall, within ten (10) days after their selection, appoint another qualified real estate appraiser to act as the arbitrator. Within fifteen (15) days after the appointment of said arbitrator, the arbitrator shall determine the fair market value of the Unit Ownership or interest therein which the Unit Owner contemplates conveying by gift, and shall thereupon give written notice of such determination to the Unit Owner and the Board, and said determination shall be conclusive upon the parties. If either party shall fail to select an appraiser, then the appraiser designated by the other party shall make the appraisal. The Board's option to purchase the Unit Ownership or interest therein shall expire forty-five (45) days after the date of receipt by it of written notice of such determination of fair market value. The cost of appraisal shall be divided equally

UNOFFICIAL COPY

between such Unit Owner and the Board and the Board's share shall be a common expense.

3. Devise. In the event any Unit Owner dies leaving a Will devising his Unit Ownership, or any interest therein to any person or persons not heirs-at-law of the deceased Unit Owner under the Rules of Descent of the State of Illinois, and said Will is admitted to probate, the members of the Board acting on behalf of the other Unit Owners, shall have a like option (to be exercised in the manner hereinafter set forth) to purchase said Unit Ownership or interest therein, either from the devisee or devisees thereof named in said Will, or if a power of sale is conferred by said Will upon the personal representative named therein, from the personal representative acting pursuant to said power, for cash at fair market value which is to be determined by arbitration as herein provided. In the event of a dispute as to purchase price, within sixty (60) days after the appointment of a personal representative for the estate of a deceased Unit Owner, the Board shall appoint a qualified real estate appraiser, and shall thereupon give written notice of such appointment to the said devisee or devisees or personal representative, as the case may be. Within fifteen (15) days thereafter, said devisee or devisees or personal representative, as the case may be shall appoint a qualified real estate appraiser. Within ten (10) days after the appointment of the two (2) said appraisers, the two so appointed shall appoint another qualified real estate appraiser to act as the arbitrator. Within fifteen (15) days thereafter the arbitrator shall determine the fair market value of the Unit Ownership or interest therein devised by the deceased Unit Owner, and shall thereupon give written notice of such determination to the Board and said devisee, devisees or personal representative, as the case may be, and said determination shall be conclusive upon the parties. If either party shall fail to select an appraiser, then the appraiser designated by the other party shall make the appraisal. The Board's right to purchase the Unit Ownership, or interest therein, at the price determined by the arbitrator shall expire sixty (60) days after the date of receipt by it of such notice if the personal representative of the deceased Unit owner is empowered to sell, and shall expire eight (8) months after the appointment of a personal representative who, is not so empowered to sell. The Board shall deemed to have exercised its option if it tenders the required sum of money to said devisee or devisees or to said personal representative, as the case may be, within the said option periods. The cost of appraisal shall be equally divided between such Unit owner and the Board and the Board's share shall be a common expense.

4. Involuntary Sale. (a) In the event any Unit Ownership or interest therein is sold at a judicial or execution sale (other than a mortgage foreclosure sale) the person acquiring title through such sale shall, before taking possession of the Unit ownership so sold, give thirty (30) days written notice to the Board of his intention so to do, whereupon the Board acting on behalf of the other Unit Owners shall have an irrevocable, option to purchase such Unit Ownership or interest therein at the same price for which it was sold at said sale. If said option

UNOFFICIAL COPY

is not exercised by the Board within said thirty (30) days after receipt of such notice, it shall thereupon expire and said purchaser may thereafter take possession of said Unit. The Board shall be deemed to have exercised its option if it tenders the required sum of money to the purchaser within said thirty (30) day period.

(b) In the event any Unit Owner shall default in the payment of any monies required to be paid under the provisions of any mortgage or trust deed against his Unit Ownership, the Board shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereupon have a lien therefor against such Unit ownership, which lien shall have the same force and effect and may be enforced in the same manner as provided in Article XV hereof.

5. Consent of Voting Members. The Board shall not exercise any option hereinabove set forth to purchase any Unit Ownership or interest therein without the prior consent of Voting Members having three-fourths (3/4) of the total votes. The Board or its duly authorized representative, acting on behalf of the other Units Owners may bid to purchase at any sale of a Unit ownership or interest therein of any unit owner living or deceased, which said sale is held pursuant to an order or direction of a court, upon the prior consent of Voting Members having three-fourths (3/4) of the total votes, which said consent shall set forth "maximum price which the Board or its duly authorized representative is authorized to bid and pay for said Unit Ownership or interest therein.

6. Release or Waiver of Option. Upon the consent of at least three-fourths (3/4) of the Board members, any of the options contained in this Article IX may be released or waived and the Unit Ownership or interest therein which is subject to an option set forth in this Article may be sold, conveyed, leased, given or devised free and clear of the provisions of this Article.

7. Proof of Termination of Option. A certificate executed and acknowledged by the acting Secretary of the Board stating that the provisions of this Article IX as hereinabove set forth have been met by a Unit Owner, or duly waived by the Board, and that the rights of the Board hereunder have terminated, shall be conclusive upon the Board and the Unit Owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Unit Owner who has in fact complied with the provisions of this Article or in respect to whom the provisions of this Article have been waived, upon request at a reasonable fee, not to exceed Ten Dollars (\$10.00).

8. Financing of Purchase Under Option. (a) Acquisitions of Unit Ownership or any interest therein under these provisions of this Article may be made from the maintenance fund or any other financing arrangement as the Board deems desirable. If said fund is insufficient the Board shall levy an

UNOFFICIAL COPY

assessment against each Unit Owner as provided for and subject to Article XVI hereof.

(b) If the members of the Board, in their discretion, borrow money to finance the acquisition of any Unit Ownership or interest therein authorized by this Article no financing may be secured by an encumbrance or hypothecation of any portion, of the Property other than the Unit ownership or interest therein to be acquired.

9. Title to Acquired Interest. Unit Ownership or interests therein acquired pursuant to the terms of this Article shall be held of record in the name of the Board and their successors in office, or such nominee as they shall designate, for the benefit of all the Unit Owners. Said Unit Ownerships or interests therein shall be sold or leased by the members of the Board in such manner as the Board shall determine without complying with the foregoing provisions relating to the Board's right of first refusal. All proceeds of such sale and/or leasing shall be deposited in the maintenance fund and credited to each Unit Owner in the same proportion in which the Board could levy a special assessment under the terms of Section 8(a) of this Article.

10. Exceptions to Board's Right to First Refusal. The Board's right of first refusal as provided in Sections 1, 2 and 3 of this Article IX shall not apply to any sale, lease, gift, devise or transfer by any corporation, trust or other entity when the original Unit Owner or persons having at least majority control of said Unit Owner are in control of the transferee, or resulting from statutory merger or consolidation, or between co-owners owners of the same Unit, or any one or more of them, or to any trustee of a trust, the sole beneficiary or beneficiaries of which are the Unit Owner, the spouse or lawful child of the Unit Owner or any one or more of them, or from any trustee of a trust to any, one or more of the beneficiaries thereof.

11. Miscellaneous. If a proposed sale, lease, devise or gift of any unit ownership is made by any Unit Owner, after compliance with the foregoing provisions, the purchaser, lessee, devisee, or donee thereunder shall be bound by and be subject to all of the obligations of such Unit Owner with respect to such Unit Ownership as provided in this Declaration, and in the case of a lease, said lease shall expressly so provide. The Unit Owner making any such lease shall not be relieved thereby from any of his obligations hereunder. Upon the expiration or termination of such lease, or in the event of any attempted subleasing thereunder, the provisions hereof with respect to the Board's right of first option shall apply to such unit Ownership. If any sale, lease, devise or gift of a Unit Ownership is made or attempted by any Unit owner without complying with the foregoing provisions, such sale, lease, devise or gift shall be subject to each and all of the right and options of the Board hereunder and each and all of the remedies and actions available to the Board hereunder or at law or in equity, in connection therewith. The foregoing provisions with respect to the Board's right

UNOFFICIAL COPY

of first option as to any proposed sale, lease, devise or gift shall be and remain in full force and effect until the Property as a whole shall be sold or removed from the Provisions of the Act, as provided in the Act, unless sooner rescinded or amended by the Unit Owners in the manner herein provided for amendments of this Declaration. The Board may adopt rules and regulations from time to time, not inconsistent with the foregoing provisions, for the purpose of implementing and effectuating the same.

12. Records. In the event of any resale of a Unit by a Unit Owner, such Owner shall obtain from the Board of Directors and shall make available for inspection to the prospective purchaser, upon demand, the following:

(a) A copy of the Declaration, By-Laws, other Condominium instruments and any rules and regulations.

(b) A statement of any liens, including a statement of the account of the Unit setting forth the amounts of unpaid assessments and other charges due and owing as authorized and limited by the provisions of Section 9 of the Act or the Condominium instruments.

(c) A statement of any capital expenditures anticipated by the Association within the current or succeeding two fiscal years.

(d) A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the Board of Directors.

(e) A copy of the statement of financial condition of the Association for the last fiscal year for which such statement is available.

(f) A statement of the status of any pending suits or judgments in which the Association is a party.

(g) A statement setting forth what insurance coverage is provided for all Unit Owner by the Association.

(h) The identity and mailing address of the principal officer of the Association or of the other officer or agent as is specifically designated to receive notices.

Such request shall be made by the seller, within the prescribed period. The Association may charge a reasonable fee for copies of all such documents requested.

UNOFFICIAL COPY

ARTICLE X

DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDING

1. Sufficient Insurance. In the event the improvements forming a part of the Property, or any portion thereof, including any Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, 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 shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event within one hundred and eighty (180) days after said damage or destruction, the Unit Owners shall elect either to sell the Property as hereinafter provided in Article XII 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 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", after first paying out of the share of each Unit Owner the amount of any unpaid liens on his Unit in the order of the priority of such liens.

2. Insufficient Insurance. (a) If the insurance proceeds are insufficient to reconstruct the Building and the Unit Owners and all other parties in interest do not voluntarily make provision for reconstruction of the Building within one hundred and eighty (180) days from the date of damage or destruction, the Board of Managers may record a notice setting forth such facts and upon the recording of such notice:

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

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

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

(iv) The Property shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property if any, shall be considered as one fund and shall be divided among all the Unit Owners in a percentage equal to the percentage of undivided interest owned by each owner in the

UNOFFICIAL COPY

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

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

(c) In the case of damage or other destruction upon the affirmative vote of not fewer than three-fourths (3/4) of the Unit Owners voting at a meeting called for that purpose, any portion of the Property affected by such damage or destruction may be withdrawn from the Act. Upon the withdrawal of any Unit or portion thereof, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the board of Managers. 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 Units 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.

3. Cessation of Common Expenses. 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.

ARTICLE XI

EMINENT DOMAIN

1. Reallocation of Common Elements and Condemnation Award. Upon the withdrawal of any Unit or portion thereof due to eminent domain, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the retraining Units on the basis of the

UNOFFICIAL COPY

percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the unit, as determined by the Board of Managers. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit owner shall be on an equitable basis, which need not be a unit's percentage interest. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest herein. Proceeds available from the withdrawal of any Limited Common Element will be distributed in accordance with the interest of those entitled to their use.

2. Cessation of Common Expenses. 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.

ARTICLE XII

SALE OF THE PROPERTY

The Unit Owners through the affirmative vote of Voting Members having at least three-fourths (3/4) of the total votes, at a meeting duly called for such purpose, may elect to sell the Property as a whole. Within ten (10) days after the date of the meeting at which such sale was approved the Board shall give written notice of such action to the holder of any duly recorded mortgage or trust deed against any Unit Ownership entitled to notice under Section 1 of Article XIX of this Declaration. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner or form may be necessary to effect such sale, provided, however, that any Unit Owner who did not vote in favor of such action and who has filed written objection thereto with the Board within twenty (20) days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the fair market value of his interest, as determined by arbitration as hereinafter provided, less the amount of any unpaid assessment or charges due and owing from such Unit Owner in the absence of agreement on the fair market value of such interest, such Unit Owner and the Board shall each select an appraiser, and two so selected shall select a third, and the fair market value, as determined by said third appraiser, shall control if either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal. The cost of the appraisal shall be divided equally between such Unit Owner and the Board, and the Board's share shall be a common expense.

UNOFFICIAL COPY

ARTICLE XIII

BY-LAWS

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

ARTICLE XIV

BOARD OF MANAGERS

1. Board of Managers (Board of Directors). (a) The direction and administration of the Property shall be vested in a Board of Managers (hereinafter referred to as the "Board"), consisting of three (3) persons. The Board shall be elected at each annual meeting of the Unit Owners. Each member of the Board shall serve for a term of one year and may succeed himself. The Board shall not receive any compensation for their services unless approved by two-thirds (2/3) of the Unit Owners. Each member of the Board shall be one of the Unit Owners; provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural Person or Persons, then any director of, such corporation, partner of such partnership, individual trustee or beneficiary of such trust or manager of such other legal entity, shall be eligible to serve as a Member of the Board.

(b) Any vacancy occurring in the Board by reason of death, removal or resignation of a member of the Board may be filled by the unanimous vote of the remaining members of the Board. In the alternative, any vacancy on the Board of Managers shall be filled by a special election of the Unit Owners to be called by the President of the Board of Managers and held not less than 45 days following the vacancy. A member elected by the Board to fill a vacancy (if applicable) shall serve until the next meeting of the members provided that if a petition is filed with the Board signed by members holding 20% of the votes of the Association requesting a meeting of the members to fill the vacancy for the balance of the unexpired term of office of his predecessor, the term of the member so elected by the Board shall terminate 30 days after the filing of the petition and a meeting of the members for the purpose of filling such vacancy for such unexpired term shall be called no later than 30 days following the filing of such petition. Members of the Board may resign at any time by written resignation delivered or mailed to any officer of the Association, which resignation shall be effective upon receipt of said resignation. If, as a result of the death, removal or resignation of a member of the Board, no member of the Board remains in office, a special meeting of members may be called to fill all vacancies for the unexpired terms of the member of the Board.

UNOFFICIAL COPY

(c) Any vacancy of the Officers of the Board of Managers shall be filled by the appointment of the President. The person so appointed shall serve for the balance of the existing term.

(d) A majority of the Board of the elected Managers shall constitute a quorum for the purposes of conducting both regular and special meetings.

(e) Members of the Board shall elect a President from amongst the Board of Managers who shall preside over the meeting of the Board of Managers and Unit Owners. The Board shall also elect a Secretary who shall keep the minutes of all meetings of the Board of Managers and of the Unit Owners and who shall in general perform all the duties incident to the Office of Secretary; and the election of a Treasurer who shall keep the financial records and Books of Account. All officers so elected shall serve for a term equal to the term of the Board of Managers and officers may succeed themselves in office.

(f) The Secretary shall mail and receive all notices and the President shall execute amendments to the Condominium Instrument.

(g) Unless otherwise expressly provided herein, any action may be taken at any meeting of the Board at which a quorum is present upon the affirmative vote of the members present. The following matters shall require the affirmative vote of two-thirds (2/3) of all the Unit Owners at a meeting duly called for that purpose:

- (i) Merger or consolidation of the Association;
- (ii) Sale, exchange, mortgage or other disposition of all, or substantially all, of the property and assets of the Association; or
- (iii) The purchase and sale of land or Units on behalf of the Unit Owners.

(h) Any Board member may be removed from office by affirmative vote of the Voting Members having at least two-thirds (2/3) of the total votes, at any special meeting called for the purpose. A successor to fill the unexpired term of a Board member removed may be elected by the Voting Members at the same meeting or any subsequent annual meeting or special meeting called for that purpose.

(i) The Board shall meet at least four (4) times annually, at such times as the Board deems necessary. Meetings of the Board shall be open to any Unit Owner, notice of any such meeting shall be mailed at least forty-eight (48) hours prior thereto; unless a written waiver of such notice is signed by the

UNOFFICIAL COPY

person or persons entitled to such notice. The open meeting shall not be required for the portion of any meeting held:

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

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

(iii) To discuss violations of Rules and Regulations of the Association or a Unit Owner's unpaid share of common expenses.

(j) Special meetings of the Board may be called by or at the request of the President or any member of the Board. The person or persons permitted to call special meetings of the Board may fix the time and place for holding any special meeting of the Board called by them.

(k) Written notice of any special meetings of the Board shall be mailed or delivered to all members of the Association and all members of the Board not calling the meeting at least 48 hours prior to date of such special meeting, unless a written waiver of such notice is signed by the person or persons entitled to such notice as hereinafter provided in Article XI. Written notices shall be deemed to be mailed when deposited in the United States mail addressed to each member at his address as it appears on the records of the Association, or his Unit if no other address has been given to the Board, with proper postage thereon prepaid. The business to be transacted at, or the purpose of any regular or special meeting of the Board need not be served on members of the Board. However, copies of said notices of meetings of the Board shall be posted in entrance ways or other conspicuous places in the condominium designated by the Board at least 48 hours prior to the meeting.

2. General Powers of the Board. The powers and duties of the Board of Managers shall include, but shall not be limited to the following matters:

(a) operation, care, upkeep, maintenance, replacement and improvement of the Common Elements;

(b) preparation, adoption and distribution of the annual budget for the Property;

(c) levying of assessments;

(d) collection of assessments from Unit Owners;

UNOFFICIAL COPY

(e) employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements;

(f) obtaining adequate and appropriate kinds of insurance;

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

(h) adoption and amendment of rules and regulations covering the details of the operation and use of the Property. No rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of the Article I of the Illinois Constitution.

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

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

(k) to pay for water, waste removal, other operating expenses, electricity, telephone and other necessary utility service for the Common Elements;

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

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

UNOFFICIAL COPY

(n) to pay any amount necessary to discharge any mechanic's lien or other encumbrance 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 interests therein of particular Unit Owners. Where one or more Unit owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said Unit Owners.

(o) to maintain and repair 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, and a Unit Owner of any Unit who 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 mailed or delivered by the Board to said Unit Owner, provided that the Board shall levy a special assessment against such Unit owner for the cost of said maintenance or repair.

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

(q) the Board's powers hereinabove enumerated and described in the Declaration, shall be limited in that the Board shall have no authority to acquire and pay for any structural alterations, additions to, or improvements of the Common Elements (other than for purposes of replacing or restoring portions of the Common Elements, subject to all the provisions of this Declaration) requiring an expenditure in excess of Five Thousand Dollars (\$5,000.00), without in each case the prior approval of Voting members having two-thirds (2/3) of the total votes.

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

(s) the Board may adopt such reasonable rules and regulations, not inconsistent herewith, as it may deem advisable for the maintenance, administration, management, operation, use, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Unit Owners and Occupants of the Property. Written notice of such rules and regulations shall be given to all Unit Owners and Occupants prior to

UNOFFICIAL COPY

the adoption thereof in accordance with the Act, and the entire Property shall at all times be, maintained subject too such rules and regulations.

(t) the Board must engage the services of an Illinois licensed property management agent to manage the Property to the extent deemed advisable by the Board.

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

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

(w) Borrowing money at such rates of interest as it may determine; issuing its notes, bonds and other obligations to evidence such borrowing; and securing any of its obligations by making a mortgage or giving a security interest encumbering all or substantially all of the assets of the Association, provided that the approval of two-thirds (2/3) of the members shall first be obtained pursuant to Section 3.7 of these By-Laws.

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

(y) Assigning its rights to future income, including the rights to receive Common Expense assessments.

(z) Reasonably accommodating the needs of a handicapped Unit Owner as required by the Human Rights Act (775 ILCS, 511-101, et seq.) in the exercise of its powers with respect to the use of Common Elements or approval of modifications in an individual Unit.

(aa) To delegate the exercise of its power to committees appointed pursuant to these By-Laws.

UNOFFICIAL COPY

(bb) The Board of Directors shall have such additional authority as is authorized by the Condominium Property act, the Declaration or By-Laws.

ARTICLE XV

MEMBERS

(UNIT OWNERS)

1. Voting Rights. 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 Voting Members shall be the Unit Owner or one of the group composed of all the Unit Owners of a Unit ownership or may be some person designated by such Unit Owners to act as proxy on his or their behalf and who need not be a Unit owner. Such designations shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Unit Owner or Unit Owners. Any or all Unit Owners of a Unit Ownership, and their designee if any, may be present at any meeting of the Voting Members, but only the Voting Member of the Unit ownership may vote or take any other action, as a Voting Member either in person or by proxy. The total number of votes of all Voting Members shall be 100, and each Unit Owner or group of Unit owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Elements applicable to his or their Unit Ownership as set forth in Exhibit "B". The Association shall have one class of membership only and nothing contained in these Condominium instruments shall permit or allow different classes of membership among the Unit owners.

2. Meetings. (a) Meetings of the Voting Members shall be held at the Property or at such other place in Cook County, Illinois, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the Voting Members of at least twenty percent (20%) of the Voting Members and Voting Members having at least twenty percent (20%) of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes represented at such meeting.

(b) There shall be an annual meeting of the Voting Members on the first Wednesday of November of each succeeding November thereafter at 7:30 P.M., or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board delivered to the Voting Members not less than ten (10) days or more than thirty (30) days prior to the date fixed for said meeting.

UNOFFICIAL COPY

(c) Special meetings of the Voting members may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the Voting Members, or for any other reasonable purpose. Said meetings shall be called by written notice, by the President, a majority of the Board, or by twenty percent (20%) of the Unit owners and delivered not less than ten (10) days or more than thirty (30) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered. Matters to be submitted at special meetings of the Voting members shall, first be submitted to the Board of Managers, at least ten (10) days prior to the special meeting, who shall then submit the matters to the Voting Members.

3. Notices of Meetings. Notices of meetings required to be given herein may be delivered either personally or by mail to the person entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Unit of the Unit Owner with respect to which such voting right appertains, if no address has been given to the Board.

4. Miscellaneous. (a) No merger or consolidation of, the Association; sale; lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the Property and assets of the Association; and the purchase or sale of land or of Units on behalf of all Unit Owners shall be effectuated unless there is an affirmative vote of not less than two-thirds (2/3) of the votes of Unit Owners, except as otherwise provided for in the Declaration.

(b) When thirty percent (30%) or fewer of the Units, by number, possess over fifty percent (50%) in the aggregate of the votes in the Association, any percentage vote of members specified in the Condominium Instruments, or the Act, shall require instead the specified percentage by number of Units rather than by percentage of interest in the Common Elements allocated to Units that would otherwise be applicable.

5. Proxies. At any meeting of members, a member entitled to vote may vote either in person or by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution. Every proxy must bear the date of its execution. A proxy 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.

UNOFFICIAL COPY

ARTICLE XVI

ASSESSMENTS – MAINTENANCE FUND

1. Estimated Annual Budget and Assessments. Each year on or before November 1, the Board shall estimate the total amount necessary to pay the cost of all common expenses which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements. The annual budget shall set forth with particularity all anticipated common expenses by category as well as all anticipated assessments and other income. The budget shall also set forth each Unit Owner's proposed common expense assessment. Each Unit Owner shall receive at least thirty (30) days prior to the adoption thereof by the Board of Managers, a copy of the proposed annual budget; the annual budget shall also take into account the estimated net available cash income for the year from the operation or use of the Common Elements, if any. The "estimated annual budget" shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit "B" attached hereto. Each Unit Owner shall receive notice in the same manner as is provided in this Declaration for membership meetings, of any meeting of the Board of Managers concerning the adoption of the proposed annual budget or any increase, or establishment of an assessment. On or before January 1 of the ensuing year, and the first of each and every month of said year, said 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 assessment against his Unit Ownership made pursuant to this Section. On or before April 1 of each calendar year, the Board shall supply to all Unit Owners an itemized accounting of the common expenses for the preceding year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget or assessments, and showing the net excess or deficit of income over expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Unit owner's percentage of ownership in the Common Elements to the next monthly installment due from Unit Owners under the current year estimate, until exhausted, and any net shortage shall be added according to each Unit Owner's percentage of ownership in the Common Elements to the installments due in the succeeding six (6) months after rendering of the accounting.

2. Reserves and Adjustments. The Board shall establish and maintain a reasonable reserve for contingencies and replacements. Any extraordinary or non-recurring common, and common expense not set forth in the budget as adopted, and any increase, in, assessments over the amount adopted shall be separately assessed against all Unit Owners. If said Annual Budget proves inadequate for any reason, including nonpayment of any Unit Owner's assessment, or any non-recurring Common Expense or any Common Expense

UNOFFICIAL COPY

not set forth in the Annual Budget as adopted, the Board may at any time levy a further assessment, which shall be assessed to the Unit owners according to each Unit Owner's percentage of ownership in the Common Elements, and which may be payable in one lump sum or such installments as the Board may determine. The Board shall serve notice of such further assessment on all Unit Owners no less than ten (10) days nor more than thirty (30) days prior to the meeting in which it is adopted by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective and shall be payable at such time or times as determined by the Board. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount.

3. Special Assessment of Increase in the Budget. If an adopted Annual Budget or special assessment as provided for in this Article requires assessments against the Unit Owners in a fiscal or calendar year exceeding 115% of the assessments for the preceding year, the Board, upon written petition by Unit Owners with 20% of the votes of the Association filed within 14 days of the Board action, shall call a Special Meeting of the Unit Owners within 30 days of the date of filing of the petition to consider the Annual Budget. Unless a majority of the votes of the Unit Owners are cast at the meeting to reject the Annual Budget, it shall be deemed to be ratified, whether or not a quorum is present. If a majority of votes of the Unit Owners are cast to reject the Annual Budget at a Special Meeting of the Unit Owners, a meeting of the Board shall be held within 30 days of the date of such Special Meeting to prepare a revised Annual Budget to send to the Unit Owners together with a notice of the meeting of the Board at which adoption of such Annual Budget will be considered.

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

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

UNOFFICIAL COPY

hours as may be requested by the Unit owner. 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.

6. Insurance. Any insurance premiums assessed on a basis reflecting increased charges for coverage on certain Units shall be assessed to such Unit.

7. Assessments. If a Unit Owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the members of the Board may bring suit for and on behalf of themselves and as representatives of all Unit owners, to enforce collection thereof or to foreclose the lien therefor as hereinafter provided; and there shall be added to the amount due the costs of said suit, and other fees and expenses together with legal interest and reasonable attorneys' fees to be fixed by the Court. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided, shall be and become a lien or charge against the Unit Ownership of the Unit Owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Such lien shall take effect and be in force when and as provided in the Act; provided, however, that encumbrances owned or held by any bank, insurance company, savings and loan association or other lender shall be subject as to priority after written notice to said encumbrancer of unpaid common expenses only to the lien of all common expenses on the encumbered Unit Ownership which become due and payable subsequent to the date the encumbrancer either takes possession of the Unit, accepts a conveyance of any interest in the unit ownership or has a receiver appointed in a suit to foreclose its lien. In addition to the foregoing, the Board or its agents shall have such other rights and remedies to enforce such collection as shall otherwise be provided or permitted by law from time to time. Without limiting the generality of the foregoing, if any Unit Owner shall fail to pay the proportionate share of the Common Expenses or of any other expense required to be paid hereunder when due, such rights and remedies shall include: (1) The right to enforce the collection of such defaulting Unit Owner's share of such expenses (whether due by acceleration or otherwise), together with interest thereon, at the maximum rate permitted by law, and all fees and costs (including reasonable attorneys' fees) incurred in the collection thereof; (2) the right, by giving such defaulting Unit Owner five days' written notice of the election of the Board so to do, to accelerate the maturity of the unpaid installments of such expenses accruing with respect to the balance of the assessment year; and (3) the right to take possession of such defaulting Unit Owner's interest in the Property, to maintain for the benefit of all the other Unit owners an action for possession in the manner prescribed in "an Act in regard to Forcible Entry and Detainer" approved February 16, 1874, as amended, and to execute leases of such defaulting Unit Owners' interest in the Property and apply the rents derived therefrom against such expenses.

UNOFFICIAL COPY

8. Nonuse. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or abandonment of his Unit.

9. Priority of Liens. Any mortgage or trust deed owned or held by a First Mortgagee and recorded prior to the recording or mailing of a notice by the Association of the amount owing by a Unit Owner who has refused or failed to pay his share of the monthly assessment when due shall be superior to the lien of such unpaid Common Expenses set forth in said notice and to all assessments for Common Expenses which become due and are unpaid subsequent to the date of recording of such first mortgage or first trust deed. Any First Mortgagee who comes into possession of a Unit pursuant to the remedies provided in the mortgage or trust deed or deed in lieu of foreclosure of the mortgage or trust deed or deed in lieu of foreclosure shall not be liable for, and shall take the Unit and its proportionate interest in the Common Elements free from, claims for unpaid common or special assessments levied by the Association which accrue prior to the date of possession as aforesaid.

ARTICLE XVII

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

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

1. General Use. No part of the Property shall be used for other than housing and related common purposes for which the Property was designed. Each Unit or any two or more adjoining Units used together shall be used as a residence for a single family and such other uses permitted by this Declaration and for no other purpose. That part of the Common Elements separating any two or more adjoining Units used together as aforesaid may be altered to afford ingress and egress to and from such adjoining units in such manner and upon such conditions as shall be determined by the Board in writing.

2. Obstruction of Common Elements and Unit Maintenance. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without prior consent of the Board except as herein expressly provided. Each Unit owner shall be obligated to maintain and keep in good order and repair his own Unit.

3. Prohibited Use. Nothing shall be done or kept in any Unit, or in the Common Elements which will increase the rate of insurance on the Building or contents thereof, applicable for residential use, 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 Common Elements which will result in the cancellation of insurance on

UNOFFICIAL COPY

the Building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Elements. No Unit owner shall overload the electric wiring in the Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others, or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior written consent of the Board.

4. Unit Owner Insurance. Each Unit owner shall be responsible for his own insurance on his personal property in his own Unit, his personal property stored elsewhere on the Property and his personal liability to the extent not covered by the liability insurance for all the Unit Owners obtained by the Board as hereinbefore provided.

5. Exterior Attachments. Unit Owners shall not cause or permit anything to be placed on the outside walls of the Building and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Board.

6. Window Treatment. The use and the covering of the interior surfaces of the glass windows and/or doors appurtenant to the Units of the Building, whether by draperies, shades or other items visible from the exterior of the Building shall be subject to the rules and regulations of the Board.

7. Floor Coverings. The Board or Directors shall have the right to require the Owners or occupants of all the units on the second, third, fourth and fifth floors to carpet over at least 80% of the floor area of their unit exclusive of the kitchen and the bath areas.

8. Laundry Machines. No laundry machines shall be allowed on the Property, other than coin machines to be supplied and operated by the Association.

9. Pets, etc. No animals, reptiles, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that dogs, cats, or other household pets may be kept in units, subject to rules and regulations adopted by the Board provided that they are not kept, bred or maintained for any commercial purpose, and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Board.

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

UNOFFICIAL COPY

11. Unsignliness. No clothes, sheets, blankets, laundry or any kind of other articles shall be hung out or exposed on any, part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

12. Personal Effects. There shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Elements except that baby carriages, bicycles and other personal property may be stored in the common storage area designed for that purpose.

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

14. For Sale and For Rent Signs. No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property except at such location and in such form, as shall be determined by the Board.

15. Common Elements. Nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board.

16. Exceptions. The unit restrictions in paragraphs 1 and 12 of this Article XVII shall not, however, be construed in such a manner as to prohibit a Unit Owner from: (a) maintaining his professional library therein, (b) keeping his personal business or professional records or accounts therein, or (c) handling his personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of Section 1 and 12 of this Article XVII.

17. Disabilities. Until determined by federal or state legislation, administrative agency or court of law, the Common Elements shall not be subject to the public facility regulations of the Americans With Disabilities Act. In order to conform to the Fair Housing Amendments Act of 1988, any Unit Owner or Resident may make reasonable modification to his Unit or its limited Common Elements, subject to the following:

(a) All requests for modification to a Unit, Common Elements or Limited Common Elements must be in writing.

(b) The Board may request copies of plans, specifications, drawings, certifications and other reasonable documentation for its review.

UNOFFICIAL COPY

(c) The Board may establish reasonable guidelines for construction of any addition, improvement or modification.

(d) All work must be approved by the Board prior to commencing construction.

(e) The Board may require the Owner or Resident to return the modification(s) to its original condition at Owner's expense upon sale or transfer of Unit Ownership.

(f) The Board of Directors shall have the authority to establish a fee for administration and documentation associated with Residents moving in and out of the premises, including a security deposit for damages to the Common Elements.

18. **Flags.** (a) An American Flag shall be defined as a flag made of fabric, cloth, or paper displayed from a staff or flagpole or in a window. An American Flag shall not include a depiction or emblem of the American flag made of lights, paint, or roofing, siding, or paving material, flora or balloons, or any other similar building, landscaping, or decorative component. (b) A Military Flag shall be defined as a flag of any branch of the United States Armed Forces or the Illinois National Guard made of fabric, cloth, or paper displayed from a staff or flagpole or in a window. A Military Flag shall not include a depiction or emblem of a military flag made of lights, paint, or roofing, siding, or paving material, flora or balloons, or any other similar building, landscaping, or decorative component.

In the interests of the health, safety, and welfare of the Association, the Board has adopted the following Rules and Regulations governing the display of American and Military Flags:

(a) The following are the approved guidelines to be followed when displaying American or Military Flags: The flag must be rectangular in shape not to exceed 3 feet by 5 feet in size suspended on a pole (maximum length 65 inches) mounted by a bracket which is affixed to the trim Board or brickwork no more than 75 inches above the ground or porch floor. The bracket must be capable of supporting the pole and flag at a 20 to 45 degree angle from vertical without damaging the buildings exterior.

(b) The display of the American Flag shall be subject to the provisions of Title 4 of the United States Code, Chapter 1 (The Flag), Sections 4 through 10, including but not limited to the following:

(i) It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flagstaves in the open. However, when patriotic effect is desired, the flag may be displayed 24 hours a day if properly illuminated during the hours of darkness.

UNOFFICIAL COPY

(ii) The flag should be hoisted briskly and lowered ceremoniously.

(iii) The flag should not be displayed on days when the weather is inclement, except when an all weather flag is displayed.

(iv) When the flag of the United States is displayed from a staff projecting horizontally or at an angle from the window sill, balcony, or front of a building, the union of the flag should be placed at the peak of the staff unless the flag is at the half-staff. When the flag is suspended over a sidewalk from a rope extending from a house to a pole at the edge of the sidewalk, the flag should be hoisted out, union first, from the building.

(v) When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right, that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way, with the union or blue field to the left of the observer in the street.

(c) A flag pole or mount may not be installed on a portion of the Common Elements. A flag pole or mount may be installed on that portion of the property considered a limited common element that is under the exclusive use and control of an Owner, specifically the balcony, patio, or exterior surface of an Owner's Unit.

(d) In order to protect the health, safety and welfare of the residents and their property the Board reserves the right to inspect the installation and maintenance of the flag pole.

(e) Once installed, the owner will be responsible for the maintenance of the flag pole. If additional cost is required to maintain the portion of property on which the flag pole is installed, the Board may assess this cost back to the unit owner. If it is necessary for the Association to remove the flag pole to perform maintenance, the owner will be advised accordingly.

(f) The owner shall be responsible to fund the entire cost of any maintenance, repair or replacement to the property resulting from installation of the flag pole. In addition, the owner must restore the property to its original condition upon removal of the flag pole. Owner does hereby indemnify and hold harmless the Board of Directors of the Association, its agents and members, from any claims for maintenance or damages to the flag or flag pole. Owner shall display any flag at their own risk.

(g) The Owner hereby indemnifies and holds harmless the Board of Directors, the Association, its agents and members from any and all claims, controversies or causes of action resulting from the installation or use of the flag pole, including the payment of any and all costs of litigation and

UNOFFICIAL COPY

attorneys' fees resulting therefrom. Owner agrees to be responsible for any damage to the property or any injury to any individual as a result of the installation of the flag pole.

(h) Upon transference of the ownership or occupancy of the unit, the Owner shall inform the successor in title, including any purchaser by Articles of Agreement for Warranty Deed, or tenant, of the existence of these Rules and Regulations and the obligations set forth herein. All obligations herein shall pass to any successor in interest. If the transferee is unwilling to assume the responsibilities set forth herein, and execute a new hold harmless agreement, the flag pole must be removed prior to conveyance.

19. Satellite Dishes. No mast, satellite dish, antennae or other structure for transmitting or receiving messages or programs by radio or television shall be erected, permitted or maintained in or upon any part of the Common Elements without the prior written approval of the Board, subject to any federal, state or local restrictions on the Board's authority and the Rules and Regulations. The Association may contract for cable or satellite TV as provided for herein.

ARTICLE XVIII

AVAILABILITY OF RECORDS

1. In addition to the provisions contained herein, the Board shall maintain the following records of the Association available for examination at convenient hours of weekdays by the Unit Owners or their First Mortgagees and their duly authorized agents or attorneys:

- a) the Association's declaration, By-Laws, and plats of survey, and all amendments of these;
- b) the rules and regulations of the association, if any;
- c) if the Association is incorporated as a corporation, the articles of incorporation of the Association and all amendments to the articles of incorporation;
- d) minutes of all meetings of the Association and its Board of Directors for the immediately preceding seven (7) years;
- e) all current policies of insurance of the association;
- f) all contracts, leases, and other agreements then in effect to which the Association is a party or under which the Association or the Unit Owners have obligations or liabilities;

UNOFFICIAL COPY

g) a current listing of the names, addresses, and weighted vote of all Owners entitled to vote;

h) ballots and proxies related to ballots for all matters voted on by the Unit Owners of the Association during the immediately preceding twelve (12) months, including but not limited to the election of members of the Board of Directors; and

i) the books and records of account for the Association's current and ten (10) immediately preceding fiscal years, including but not limited to itemized and detailed records of all receipts and expenditures.

2. Any Unit Owner shall have the right to inspect, examine, and request copies for a reasonable fee, the records described in subparagraphs (a) – (e) of Section 1, in person or by agent, at any reasonable time or times, at the Association's principal office. In order to exercise this right, the Unit Owner must submit a written request to the Board, or its authorized agent, stating with particularity the records sought to be examined. Upon paying a reasonable fee, failure of the Board to make available all records so requested within 30 days of receipt of the Unit Owner's written request shall be deemed a denial.

Any Unit Owner who prevails in an enforcement action to compel examination of records described in subparagraphs (a) – (e) of Section 1 shall be entitled to recover reasonable attorney's fees and costs from the Association.

3. Except as otherwise provided in Section 5, any Unit Owner of the Association shall have the right to inspect, examine, and make copies of the records described in subparagraphs (f) – (i) of Section 1, in person or by agent, at any reasonable time or times but only for a proper purpose, at the Association's principal office and at a reasonable fee. In order to exercise this right, the Unit Owner must submit a written request, to the Board or its authorized agent, stating with particularity the records sought to be examined and a proper purpose for the request. Subject to the provisions of Section 5, failure of the Board to make available all records so requested within thirty (30) business days of receipt of the Unit Owner's written request shall be deemed a denial; provided, however, that if the Association has adopted a secret ballot election process as provided in Section 18 of the Act shall not be deemed to have denied a Unit Owner's request for records described in subparagraph (h) Section 1 if voting ballots, without identifying unit numbers, are made available to the requesting Unit Owner within thirty (30) days of receipt of the Unit Owner's written request. In an action to compel examination of records described in subparagraphs (f) and (i) of Section 1, the burden of proof is upon the Unit Owner to establish that the Unit Owner's request is based on a proper purpose. Any Unit Owner who prevails in an enforcement action to compel examination of records described in subparagraph (f) and (i) of Section 1 shall be entitled to recover reasonable

UNOFFICIAL COPY

attorney's fees and costs from the Association only if the court finds that the Board acted in bad faith in denying the Unit Owner's request.

4. The actual cost to the Association of retrieving and making requested records available for inspection and examination under this Article shall be charged by the Association to the requesting Unit Owner. If a Unit Owner requests copies of records requested under this Article, the actual costs to the Association of reproducing the records shall also be charged by the Association to the requesting Unit Owner.

5. Notwithstanding the provisions of Section 3, unless otherwise directed by court order, the Association need not make the following records available for inspection, examination, or copying by its Unit Owners:

(a) documents relating to appointment, employment, discipline, or dismissal of Association employees;

(b) documents relating to actions pending against or on behalf of the Association or its Board of Directors in a court or administrative tribunal;

(c) documents relating to actions threatened against, or likely to be asserted on behalf of, the Association or its Board of Directors in a court or administrative tribunal;

(d) documents relating to common expenses or other charges owed by a Unit Owner other than the requesting Unit Owner; and

(e) documents provided to the Association in connection with the lease, sale, or other transfer of a unit by a Unit Owner other than the requesting Unit Owner.

6. 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.

ARTICLE XIX

REMEDIES FOR BREACH OF COVENANTS

RESTRICTIONS AND REGULATIONS

1. Abatement and Enjoinment. The violation of any restriction, or condition or regulation adopted by the Board, or the breach of any covenant or provisions herein contained, shall give the Board the right, in addition to the rights set forth in the next succeeding section: (a) to enter upon that part of the

UNOFFICIAL COPY

Property where such violation or breach exists and summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and the provisions hereof, the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or, (b) to enjoin, abate or remedy by appropriate legal proceeding, either at law or in equity, the continuance of any breach. All expenses of the Board in connection with such actions or proceedings including court costs and attorneys' fees and expenses and all damages, liquidated or otherwise together with interest thereon at the rate of seven percent (7%) per annum until paid, shall be charged to and assessed against such defaulting Unit Owner and upon all of additions and improvements thereto and upon all his personal property in his Unit or located elsewhere on the Property. Any and all of such rights and remedies may be exercised any time and from time to time, cumulatively or otherwise by the Board.

2. Involuntary Sale. If any Unit Owner (either by his own conduct or by the conduct of any Occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration, or the regulations adopted by the Board, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall re-occur more than once after such notice, then the Board shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing to terminate the rights of said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use or control his Unit and thereupon an action in equity may be filled by the members of the Board against the defaulting Unit Owner for a decree of mandatory injunction against the Unit Owner or Occupant or, in the alternative, for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit Owner by him on account of the said violation, and ordering that the right, title and interest of the Unit Owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Unit Owner from re-acquiring his interest in the Property at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Unit Ownership and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall provide, that the purchaser shall take the interest in the Property sold subject to this Declaration.

UNOFFICIAL COPY

ARTICLE XX

GENERAL PROVISIONS

1. Notice to Mortgagees. Upon written request to the Board, the Owner 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.

2. Notices to Board, Association and Unit Owners. 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:

1210-22 CENTRAL STREET
EVANSTON, ILLINOIS

(indicating thereon the number of the respective Unit if addressed to a Unit Owner), or at such other address as herein provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit owners. Any Unit Owner may also designate a different address for notices to him by giving written notice of his change of address to the Board or Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgement of the receipt thereof or if addressed to a Unit Owner, when deposited in his mailbox in the Building or at the door of his Unit in the Building.

3. Notice to Decedent. Notices required to be given any devisee 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.

4. Binding Effect. Each Owner, by acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in the Property or any Unit, 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.

UNOFFICIAL COPY

5. Waiver. 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.

6. Amendment. Except as otherwise provided in the Act, this Declaration and By-Laws, the provisions of the Condominium instruments may be amended, changed or modified by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by all of the members of the Board, at least three-fourths (3/4) of the Unit Owners and the approval of any mortgagees required under the provisions of the Condominium Instruments, and containing an affidavit by an officer of the Board certifying that a copy of the amendment, change or modification has been mailed by certified mail to all mortgagees having bonafide liens of record against any Unit, not less than ten (10) days prior to the date of such affidavit. Any amendment, change or modification shall conform to the provisions of the Condominium Property Act and shall be effective upon recordation thereof. Except to the extent authorized by provisions of the Act, no amendment to the Condominium Instruments shall change the boundaries of any Unit or the undivided interest in the Common Elements, the number of votes in the Unit Owners' Association, or the liability for common expenses appertaining to a Unit.

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

8. Perpetuities and Restraints. If any of the options, privileges, covenants or created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision; (b) the rules restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last to die of the now living lawful descendents of James E. Carter, Jr., President of the United States, and Charles Percy, Senator of the State of Illinois.

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

UNOFFICIAL COPY

and the, undivided interest in the Common Elements appertaining thereto from such lien.

The Owner of a Unit shall not be liable for any claims, damages or judgments entered as a result of any action or inaction of the Board of Managers of the Association other than for mechanics' liens as set forth in this Section. Each Unit owner's liability for any judgment entered against the Board of Managers of the Association, if any, shall be limited to his proportionate share of the indebtedness as set forth in this Section, whether collection is sought through assessment or otherwise. A Unit Owner shall be liable for any claim, damage or judgment entered as a result of the use or operation of his Unit, or caused by his own conduct. Before conveying a Unit, a Developer shall record or furnish Purchaser releases of all liens affecting that Unit and its Common Element interest which the Purchaser does not expressly agree to take subject to or assume, or the Developer shall provide a surety bond or substitute collateral for or insurance against such liens.

The Board of Managers shall have standing to act in a representative capacity in relation to matters involving the Common Elements or more than one Unit, on behalf of the Unit Owners, as their interests may appear.

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

10. Release of Claims. Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, Occupancy, and Association, its officers, members of the Board, the Trustee, the Developer, the managing agent, and their respective employees and agents, for damage to the Common Elements, the Units, or to any personal property located in the Units or Common Elements, caused by fire or other form of casualty insurance.

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

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

13. Land Trust Unit Owners Exculpation. In the event title to any Unit Ownership is conveyed to a land titleholding 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

UNOFFICIAL COPY

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.

14. All resales of units shall be made subject to the provisions of the Evanston Residential Condominium Ordinance and/or such other ordinances or laws as may be in force and effect at the time of any such resale in accordance with the provisions of the Evanston Residential Condominium Ordinance, Section 1-105 of the said ordinance is hereinafter set forth in its entirety and is hereby declared to be a part of the By-Laws of this Declaration to the same extent as though they were physically located in the said by-laws.

"Section 3-105. Resale of Units.

A. A unit owner other than a declarant offering for sale his own unit shall provide to the purchaser concurrently with execution of any contract for sale a copy of the bylaws and rules and regulations of the Association, and the items as described below. If the inspection report referred to in Subsection 10 describes violations within the unit uncorrected at the time of the contract execution, the purchaser shall have ten (10) days from receipt of the inspection report to cancel the contract.

1. A statement setting forth (a) the amount of the monthly common expense assessment, (b) any unpaid common expense or special assessment currently due and payable from the selling unit owner, (c) the information on the actual expenditures made for all repairs, maintenance, operation, or upkeep of the building in which the unit is located within the last three (3) years as found in the regular books of the Association, and set forth tabularly with the budget of the condominium. If the property has not been occupied as a condominium for a period of three (3) years, the information shall be provided for the maximum period the property has been occupied.

2. A statement of any other fees payable by unit owners.

UNOFFICIAL COPY

3. A statement of any future capital expenditures approved by the Association or the Board of Directors.

4. A statement of the amount of the reserves for capital expenditures and of any portions of those reserves designated by the Association for specified projects.

5. The most recent regularly prepared balance sheet and income and expense statement, if any, of the Association.

6. The current operating budget of the Association.

7. A statement of any judgments against the Association and the status of any pending suits to which the Association is a party, of which it has knowledge.

8. A statement describing any insurance coverage provided for the benefit of unit owners.

9. A statement of whether the Board of managers has knowledge of any violations of all applicable Housing and Building Codes or other applicable codes with respect to the unit or any other portion of the condominium.

10. An inspection report prepared by the City of Evanston and no more than two years old describing the code violations contained in the common areas, and a current code inspection report on the violations contained within the unit being offered for sale.

B. The association, within ten (10) days after a request by a unit owner, shall make a good faith effort to furnish a certificate containing the accurate information necessary to enable the unit owner to comply with this Section. A unit owner delivering a certificate is not liable to the purchaser for any erroneous information from the Association, provided that the errors are unknown to the owner. A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the Association.

C. A unit owner is not liable to a purchaser for the failure or delay of the Association to provide the certificate in a timely manner. Inability to obtain any of the information because of Association inaction shall be set forth in the sworn statement of the

UNOFFICIAL COPY

unit owner. The purchaser shall have five (5) days to void said contract for said failure to provide data.

D. This Section shall be attached to, incorporated into, and made a part of the bylaws of all condominium hereinafter created and shall apply to all resale contracts entered into subsequent to the effective date of this ordinance."

15 SPECIAL AMENDMENT: The Association reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the 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 or supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Board to vote in favor of, make, or consent to a Special Amendment on behalf of each 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 Dwelling 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 Board to vote in favor of, make, execute and Record Special Amendments.

16. ALTERATIONS TO 3RD FLOOR UNITS: Each owner of a third floor unit shall have the right to remove all or any part of the ceilings in their respective unit so as to incorporate into their unit all of the area above the ceiling to the roof for the purpose of creating a vaulted ceiling and/or a loft area. Any owner seeking to avail himself of this right must as a condition precedent to the commencement of any work first submit to the Condominium Board a set of plans prepared by either a licensed architect or a registered structural engineer showing the precise location of all load bearing support members, together with the details for the enclosures of the perimeter walls as well as any openings in the roof for the installation of chimney flues, windows, or duct work including exhaust, heating, or air conditioning systems. As a further condition, the unit owner shall furnish such indemnities as the Condominium Board may reasonably require to insure the structural stability and watertight condition of the roof as well as such additional undertaking by the unit owner to at all times be responsible for the water and weather tight condition of the roof in the areas surrounding the installation of the windows, duct work, or flues.

UNOFFICIAL COPY

APPROVED THIS 4 DAY OF JUNE, 2008

The Sissilla Condominium Association

 PRESIDENT

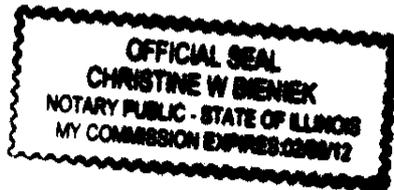
 SECRETARY

 Treasurer

Being the Board of Directors of
The Sissilla Condominium Association

*Subscribed and sworn to before
me this sunday of January, 2009*

Christine W. Bieniek, Notary Public



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOTS A AND B IN LOTT'S RESUBDIVISION OF LOTS 5 TO 9 AND 18 AND OF ALLEYS SOUTH AND ADJOINING SAID LOTS 7 AND 8 AND THE EAST 10 FEET OF LOT 6 AND WEST AND ADJOINING LOT 9 VACATED BY ORDINANCE RECORDED AS DOCUMENT NO. 7945771, IN CENTRAL STREET ADDITION TO EVANSTON BEING THAT PART OF THE NORTH WEST QUARTER OF FRACTIONAL SECTION 7, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING SOUTH OF THE SOUTH LINE OF CENTRAL STREET AND EAST OF THE EAST LINE OF ASBURY AVENUE AND WEST OF THE WEST LINE OF RIGHT OF WAY OF SANITARY DISTRICT IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT B****LEGAL DESCRIPTION AND****UNIT NUMBERS, ADDRESSES AND PERCENTAGES OF OWNERSHIP**

Lots A and B in Lott's Resubdivision of Lots 5 to 9 and 18 and of Alleys South and Adjoining said Lots 7 and 8 and the East 10 feet of Lot 6 and West and Adjoining Lot 9 vacated by Ordinance recorded as Document No. 7945771, in Central Street Addition to Evanston being that part of the North West Quarter of Fractional Section 7, Township 41 North, Range 14, East of the Third Principal Meridian lying South of the South line of Central Street and East of the East line of Asbury Avenue and West of the West line of right of way of Sanitary District in Cook County, Illinois.

Unit No.	Address	PIN Numbers	% of Ownership
1N	1210 Central Street, Evanston, IL 60201	11-07-100-020-1001	2.320
1S	1210 Central Street, Evanston, IL 60201	11-07-100-020-1002	2.320
2N	1210 Central Street, Evanston, IL 60201	11-07-100-020-1003	2.320
2S	1210 Central Street, Evanston, IL 60201	11-07-100-020-1004	2.320
3N	1210 Central Street, Evanston, IL 60201	11-07-100-020-1005	2.320
3S	1210 Central Street, Evanston, IL 60201	11-07-100-020-1006	2.320
1N	1212 Central Street, Evanston, IL 60201	11-07-100-020-1007	2.320
1S	1212 Central Street, Evanston, IL 60201	11-07-100-020-1008	2.320
2N	1212 Central Street, Evanston, IL 60201	11-07-100-020-1009	2.320
2S	1212 Central Street, Evanston, IL 60201	11-07-100-020-1010	2.320
3N	1212 Central Street, Evanston, IL 60201	11-07-100-020-1011	2.320
3S	1212 Central Street, Evanston, IL 60201	11-07-100-020-1012	2.320
1N	1214 Central Street, Evanston, IL 60201	11-07-100-020-1013	2.320
1S	1214 Central Street, Evanston, IL 60201	11-07-100-020-1014	2.320
2N	1214 Central Street, Evanston, IL 60201	11-07-100-020-1015	2.320
2S	1214 Central Street, Evanston, IL 60201	11-07-100-020-1016	2.320
3N	1214 Central Street, Evanston, IL 60201	11-07-100-020-1017	2.320
3S	1214 Central Street, Evanston, IL 60201	11-07-100-020-1018	2.320
Basement	1214 Central Street, Evanston, IL 60201	11-07-100-020-1019	1.144
1W	1216 Central Street, Evanston, IL 60201	11-07-100-020-1020	2.924
1E	1216 Central Street, Evanston, IL 60201	11-07-100-020-1021	2.450
2W	1216 Central Street, Evanston, IL 60201	11-07-100-020-1022	2.924
2E	1216 Central Street, Evanston, IL 60201	11-07-100-020-1023	2.450
3W	1216 Central Street, Evanston, IL 60201	11-07-100-020-1024	2.924
3E	1216 Central Street, Evanston, IL 60201	11-07-100-020-1025	2.450
1N	1218 Central Street, Evanston, IL 60201	11-07-100-020-1026	2.532
1S	1218 Central Street, Evanston, IL 60201	11-07-100-020-1027	2.532
2N	1216 Central Street, Evanston, IL 60201	11-07-100-020-1028	2.532
2S	1218 Central Street, Evanston, IL 60201	11-07-100-020-1029	2.532
3N	1218 Central Street, Evanston, IL 60201	11-07-100-020-1030	2.532
3S	1218 Central Street, Evanston, IL 60201	11-07-100-020-1031	2.532
1E	1220 Central Street, Evanston, IL 60201	11-07-100-020-1032	2.189
1W	1220 Central Street, Evanston, IL 60201	11-07-100-020-1033	2.157
2E	1220 Central Street, Evanston, IL 60201	11-07-100-020-1034	2.189

UNOFFICIAL COPY

2W	1220 Central Street, Evanston, IL 60201	11-07-100-020-1035	2.157
3E	1220 Central Street, Evanston, IL 60201	11-07-100-020-1036	2.189
3W	1220 Central Street, Evanston, IL 60201	11-07-100-020-1037	2.157
1E	1222 Central Street, Evanston, IL 60201	11-07-100-020-1038	2.124
1W	1222 Central Street, Evanston, IL 60201	11-07-100-020-1039	2.124
2E	1222 Central Street, Evanston, IL 60201	11-07-100-020-1040	2.124
2W	1222 Central Street, Evanston, IL 60201	11-07-100-020-1041	2.124
3E	1222 Central Street, Evanston, IL 60201	11-07-100-020-1042	2.124
3W	1222 Central Street, Evanston, IL 60201	11-07-100-020-1043	2.124
		Total	100.000

Property of Cook County Clerk's Office

