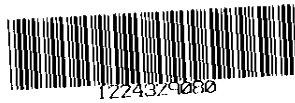


UNOFFICIAL COPY

	 1224329080 Doc#: 1224329080 Fee: \$288.00 Eugene "Gene" Moore RHSP Fee: \$10.00 Cook County Recorder of Deeds Date: 08/30/2012 03:07 PM Pg: 1 of 59
For use by Recorder's Office only	

**CORRECTED AMENDED AND RESTATED DECLARATION
OF CONDOMINIUM OWNERSHIP AND BY-LAWS,
EASEMENTS, RESTRICTIONS, AND COVENANTS FOR THE
1340 STATE PARKWAY CONDOMINIUM ASSOCIATION**

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

RYAN H. SHPRITZ
Kovitz Shifrin Nesbit
750 Lake Cook Road, Suite 350
Buffalo Grove, IL 60089 – 847/537-0500

RECORDING FEE 288
DATE 8/30/12 COPIES 60x
OK BY VISTO

UNOFFICIAL COPY

CORRECTED AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND BY-LAWS EASEMENTS, RESTRICTIONS, AND COVENANTS FOR THE 1340 STATE PARKWAY CONDOMINIUM ASSOCIATION

TABLE OF CONTENTS

ARTICLE I - DEFINITIONS	2
Act	2
Building	2
Common Elements	2
Common Expenses	2
Condominium Instruments	2
Declaration	2
Limited Common Elements	2
Majority or Majority of the Unit Owners	2
Meeting of the Board of Managers, of Board of Master Association.....	3
Occupant	3
Parcel	3
Parking Area	3
Parking Space	3
Person	3
Plat	3
Property	3
Purchaser.....	3
Record	3
Reserves.....	3
Unit	4
Unit Owner	4
Unit Owners' Association or Association	4
Voting Member.....	4
 ARTICLE II – UNITS	 4
1. Description.....	4
2. Certain Structures Not Constituting Part of A Unit.....	4
 ARTICLE III – COMMON ELEMENTS	 5
1. Description.....	5
2. Ownership of Common Elements	5
3. Limited Common Elements	5
4. Assignment of Limited Common Elements	5
5. Transfer of Limited Common Elements	5

UNOFFICIAL COPY

ARTICLE IV – GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS		6
1. Submission of Property to Provisions of the Act.....		6
2. No Severance of Ownership		6
3. Easements		6
4. Easements and Rights to Run with Land.....		6
5. Decks, Roof Decks, Terraces, Patios, Parking Area and Storage.....		7
 ARTICLE V – COMMON EXPENSES, MORTGAGES AND REAL ESTATE TAXES		7
1. Common Expenses		7
2. Separate Mortgages.....		8
3. Separate Real Estate Taxes		8
 ARTICLE VI – INSURANCE		8
 ARTICLE VII – ADMINISTRATION AND OPERATION		12
1. Administration		12
2. Duties and Powers of the Association		13
3. Actions of the Board and Indemnity		13
4. Board's Determination Binding		13
5. Records of the Association – Availability for Examination		13
 ARTICLE VIII – MAINTENANCE, ALTERATIONS, DECORATING		14
1. Maintenance, Repairs and Replacements		14
2. Limited Common Elements		15
3. Alterations, Additions or Improvements		15
4. Decorating.....		15
 ARTICLE IX – SALE, LEASING OR OTHER ALIENATION		15
1. Sale or Lease.....		15
2. Gift.....		16
3. Devise		17
4. Involuntary Sale.....		17
5. Consent of Voting Members.....		18
6. Release or Waiver of Option		18
7. Proof of Termination of Option		18
8. Financing of Purchase Under Option		18
9. Title to Acquired Interest		18
10. Exceptions to Board's Right of First Refusal.....		19
11. Miscellaneous		19

UNOFFICIAL COPY

ARTICLE X – DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDINGS	19
1. Sufficient Insurance	19
2. Insufficient Insurance	20
3. Cessation of Common Expenses	21
ARTICLE XI – EMINENT DOMAIN.....	21
1. Reallocation of Common Elements and Condemnation Award	21
2. Cessation of Common Expenses	21
ARTICLE XII – SALE OF THE PROPERTY.....	21
ARTICLE XIII - BY-LAWS.....	22
ARTICLE XIV – BOARD OF MANAGERS	22
1. Board of Managers (Board of Directors)	22
2. General Powers of the Board	25
ARTICLE XV – MEMBERS (UNIT OWNERS)	29
1. Voting Rights	29
2. Meetings.....	30
3. Notices of Meetings	30
4. Miscellaneous (a).....	31
5. Miscellaneous (b).....	31
ARTICLE XVI – ASSESSMENTS – MAINTENANCE FUND	31
1. Estimated Annual Budget and Assessments	31
2. Reserves and Adjustments	32
3. Failure to Prepare Estimates	33
4. Books and Records	33
5. Use of Funds	33
ARTICLE XVII – COVENANTS AND RESTRICTIONS AS TO USE AND PROPERTY	33
1. General Use.....	34
2. Obstruction of Common Elements and Unit Maintenance	34
3. Prohibited Use.....	34
4. Unit Owner Insurance.....	34
5. Exterior Attachments	34
6. Window Treatment	34
7. Floor Covering.....	35
8. Pets, etc.	35
9. Nuisances	35

UNOFFICIAL COPY

10.	Unsignliness.....	35
11.	Personal Effects	35
12.	Commercial Activities	35
13.	“For Sale” and “for Rent Sign	35
14.	Common Elements.....	35
15.	Exceptions.....	35
16.	Flags.....	35

ARTICLE XVIII – REMEDIES FOR BREACH OF CONVENANTS, RESTRICTIONS AND REGULATIONS		36
1.	Abatement and Enjoyments.....	36
2.	Involuntary Sale.....	36

ARTICLE XIX - GENERAL PROVISIONS		37
1.	Notices to Mortgagees	37
2.	Notices to Board	37
3.	Notice to Decedent.....	37
4.	Binding Effect.....	38
5.	Waiver.....	38
6.	Amendment.....	38
7.	Invalidity	38
8.	Perpetuities and Restraints.....	38
9.	Liens.....	38
10.	Release of Claims	39
11.	Construction.....	39
12.	Headings	39
13.	Word Construction.....	39
14.	Land Trust Unit Owners’ Exculpation.....	39
15.	Installment Contract.....	40
16.	Transfer.....	40

EXHIBIT “A” – LEGAL DESCRIPTION
EXHIBIT “B” – PLAT OF SURVEY

UNOFFICIAL COPY

CORRECTED AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP AND BY-LAWS EASEMENTS, RESTRICTIONS, AND COVENANTS FOR THE 1340 STATE PARKWAY CONDOMINIUM ASSOCIATION

This document is recorded for the purpose of amending the Declaration of Condominium Ownership and By-Laws, Easements, Restrictions and Covenants (hereafter referred to as "Declaration") for the 1340 State Parkway Condominium Association (hereafter referred to as "Association") which Declaration was recorded on June 23, 1994, as Document No. 94552842 in the Office of the Recorder of Deeds of Cook County, Illinois, against the property (hereafter referred to as "Property") legally described in Exhibit "A" attached hereto.

This Amended and Restated Declaration is adopted pursuant to the provisions of Section 27(b)(1) of the Illinois Condominium Property Act (the "Act"), 765 ILCS 605/27. This section of the Act provides that, where there is an omission or error in the Declaration, By-Laws or other condominium instruments, the Association may correct the error or omission by an amendment in order to conform the instrument with the provisions of the Act. The Amended and Restated Declaration may be adopted by a vote of two-thirds (2/3) of the members of the Board of Managers unless the Board of Managers' action is rejected by a majority of the votes of the Unit Owners at a meeting of the Unit Owners duly called for that purpose pursuant to a written petition of the Unit Owners having twenty percent of the votes of the Association filed within thirty (30) days after the action of the Board of Managers to approve the Amended and Restated Declaration.

RECITALS

WHEREAS, by the Declaration recorded in the Office of the Recorder of Deeds of Cook County, Illinois, the Property has been submitted to the provisions of the Act; and

WHEREAS, provisions of the Act establish certain requirements which the Association is required by law to follow, and with which the present Declaration is in conflict; and

WHEREAS, because of this conflict between the language of the Declaration and the Act, there is the likelihood that confusion, illegal action, or litigation could result imposing needless financial expense on the Association and individual Unit Owners and possibly also calling into question the validity of actions of the Board of Managers of the Association; and

WHEREAS, Section 27(b)(1) of the Act provides a procedure for amending the Declaration to correct omissions and other errors in the Declaration; and

WHEREAS, this Amended and Restated Declaration to the Declaration was approved by at least two-thirds (2/3) of the members of the Board of Managers of the Association at a duly called meeting held September 20, 2011; and

WHEREAS, the Board of Managers of the Association has given written notice of its action to all Unit Owners according to the procedures set forth in the Act; and

UNOFFICIAL COPY

WHEREAS, the requisite number of Unit Owners failed to submit a written petition to the Board of Managers within thirty days of the Board of Managers' action, as provided by Section 27(b)(3) of the Act;

NOW THEREFORE, the Declaration of Condominium for 1340 State Parkway Condominium Association is hereby amended in accordance with the text as set forth in Exhibit "B", which is attached hereto and made a part hereof.

Except as expressly provided in this Amended and Restated Declaration, the remaining provisions of the Declaration are hereby confirmed and ratified and shall continue in full force and effect without change.

ARTICLE I DEFINITIONS

For purposes of brevity and clarity, certain words and terms used in this Declaration are defined as follows;

- (a) "Act" means the "Condominium Property Act", as amended from time to time, of the State of Illinois.
- (b) "Building" means all structures, attached or unattached, containing one or more units.
- (c) "Common Elements" means all portions of the property except the units, including Limited Common Elements unless otherwise specified.
- (d) "Common Expenses" means the proposed or actual expenses affecting the property, including reserves, if any, lawfully assessed by the Board of Managers of the Unit Owner's Association.
- (e) "Condominium Instruments" means all documents and authorized amendments thereto recorded pursuant to the provisions of the Act, including the Declaration, Bylaws and Plat.
- (f) "Declaration" means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided, and such Declaration as from time to time amended.
- (g) "Limited Common Elements" means 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.
- (h) "Majority" or "Majority of the Unit Owners" means the owners of more than 50% in the aggregate in interest of the undivided ownership of the Common Elements. Any specified

UNOFFICIAL COPY

percentage of the Unit Owners means such percentage in the aggregate in interest of such undivided ownership. "Majority" or "Majority of the members of the Board of Managers" means more than 50% of the total number of persons constituting such Board pursuant to the Bylaws. Any specified percentage of the members of the Board of Managers means that percentage of the total number of persons constituting such Board pursuant to the Bylaws.

(i) "Meeting of Board of Managers or Board of Master Association" means any gathering of a quorum of the members of the Board of Managers or Board of the Master Association held for the purpose of conducting Board business.

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

(k) "Parcel" means the lot or lots, tract or tracts of land, described in the Declaration, submitted to the provisions of this Act.

(l) "Parking Area" means the area provided for parking automobiles as shown or referred to on the Plat, if any.

(m) "Parking Space" means a portion of the parking area intended for the parking of a single automobile, if any.

(n) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

(o) "Plat" means a plat or plats of survey of the parcel and of all Units in the property submitted to the provisions of this Act, which may consist of a three-dimensional horizontal and vertical delineation of all such Units.

(p) "Property" means 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 this Act.

(q) "Purchaser" means any person or persons who purchase a Unit in a bona fide transaction for value.

(r) "Record" means to record in the office of the recorder or, whenever required, to file in the office of the Registrar of Titles of the county wherein the property is located.

(s) "Reserves" means 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.

UNOFFICIAL COPY

(t) "Unit" means a part of the property designed and intended for any type of independent use.

(u) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit, or, in the case of a leasehold condominium, the lessee or lessees of a Unit whose leasehold ownership of the Unit expires simultaneously with the lease described in item (x) of this Section.

(v) "Unit Owners' Association" or "Association" means the association of all the Unit Owners, acting pursuant to bylaws through its duly elected Board of Managers.

(w) "Voting Member" means the person entitled to exercise all voting power with respect to each Unit Ownership.

ARTICLE II UNITS

1. Description. All Units located on the Property have the percentage ownership as set forth in Exhibit "A" hereto and made a part hereof and are legally described as follows:

1346 North State Parkway

Unit 1N	Unit 1S
Unit 2	
Unit 3N	Unit 3S
Unit 4N	Unit 4S

as delineated on the plat of survey which survey is attached as Exhibit "B" 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 and identified as a Unit in the delineation thereof in Exhibit B. The legal description of each Unit shall consist of the identifying number or symbol of such Unit followed by the legal description of the Property. Except as, provided by the Act, no Unit Owner shall, by deed, plat or otherwise, subdivide or in any other manner cause the Unit to be separated into any tracts or parcels different from the whole Unit as shown on Exhibit B.

2. Certain Structures Not Constituting Part of A Unit. No structural components of the building, and no pipes, wires, conduits, public utility lines, ducts, flues, and shafts situated within a Unit and forming part of any system serving one or more other Units, nor the Common Elements, shall be deemed part of said Unit.

UNOFFICIAL COPY

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, outside walks and driveways, courtyard garden, landscaping, stairways, entrances and exits, halls, lobby, corridors, basement, roof, structural parts of the buildings, component parts of walls, floors and ceilings, and pipes, ducts, flues, shafts, and public utility lines serving the Common Elements of more than one Unit.
2. **Ownership of Common Elements.** Each Unit Owner shall own an undivided interest in the Common Elements as a tenant in common with all the other Unit Owners of the Property, and, except as otherwise limited in the Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as a place or residence, and such other incidental uses permitted by the Declaration, which right shall be appurtenant to and run with his Unit. Such right shall extend to each Unit Owner, and the agents, servants, tenants, family members, and invitees of each Unit Owner. Each Unit Owner's interest shall be expressed by a percentage amount and, once determined, shall remain constant and may not be changed without unanimous approval of all Unit Owners and mortgagees. The Developer has so determined each Unit's corresponding percentage of ownership in the Common Elements as set forth in Exhibit "A" attached hereto, and each Unit Owner accepts such determination.
3. **Limited Common Elements.** Except as otherwise in the 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, or which, by the terms of this Declaration or by its nature or location, are clearly intended to serve exclusively a certain Unit or Units (but less than all of the Units) or the Owner or Owners thereof. Without limiting the generality of the foregoing, the Limited Common Elements shall include perimeter windows and doors, Storage Lockers (the "Storage Lockers"), Parking Spaces (the "Parking Spaces"), Decks (the "Decks") Terraces (the "Terraces"), Patios (the "Patios"), and Roof Decks (the "Roof Decks"), all of which are indicated as such on the plat.
4. **Assignment of Limited Common Elements.** Decks, Roof Decks, Terraces and Patios, if any shall be assigned to the Unit Owners as shown in Exhibit "B".
5. **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. Each transfer shall be made by an amendment to the Declaration executed by all Unit Owners who are parties to the transfer and consented to by all other Unit Owners, and mortgagees who have any right to use the Limited Common Elements affected. The amendment shall contain a certificate showing that a copy of 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

UNOFFICIAL COPY

a reapportionment of their respective shares, the Board of Managers shall decide such reapportionment. No transfer shall become effective until the amendment has been recorded.

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

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 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.** 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.

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 upon the Developer, 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 described in this Article, or described in any other part of the 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.

UNOFFICIAL COPY

5. Decks, Roof Decks, Terraces, Patios, Parking Area and Storage. The Storage Spaces, Parking Areas, Decks, Roof Decks, Terraces and Patios are part of the Common Elements. The Board or the Association may prescribe such rules and regulations with respect to the Storage Spaces, Parking Area, Decks, Roof Decks, Terraces and Patios as it may deem fit. The Parking Area has been divided into Parking Spaces as delineated on the Plat. The legal description of such Parking Space shall consist of the identifying symbol of such Parking Space as shown on the Plat. Whenever reference is made to any Parking Space in a legal instrument or otherwise, such Parking Space may be legally described by its identifying symbol as shown on the Plat and every such description shall be deemed good and sufficient for all purposes. The Storage Spaces, Decks, Roof Decks, Terraces and Patios are as delineated on the Plat. Each Unit Ownership shall include, as a Limited Common Element appurtenant thereto, the perpetual and exclusive right to use for storage purposes (hereinafter referred to as the "Exclusive Storage Use") that certain Storage Space pertaining to the Unit set forth in Exhibit B, and for parking purposes (hereinafter referred to as the "Exclusive Parking Use") that certain Parking Space pertaining to the Unit as set forth in Exhibit B and for recreation that certain Deck, Roof Deck, Terrace or Patio (hereinafter referred to as the "Exclusive Deck Use", the "Exclusive Roof Deck Use", the "Exclusive Terrace Use" and the "Exclusive Patio Use") as set forth in Exhibit B.

Each deed, lease, mortgage, or other instrument affecting a Unit Ownership shall include the Exclusive Parking Use to the specific Parking Space. Any such deed, lease, mortgage or other instrument purporting to affect a Unit Ownership without also including the Exclusive Storage Use, the Exclusive Parking Use, the Exclusive Deck Use, the Exclusive Roof Deck Use, the Exclusive Terrace Use and/or the Exclusive Patio Use expressly allocated to said Unit, shall be deemed and taken to include the said Exclusive Storage Use, Exclusive Parking Use, Exclusive Deck Use, the Exclusive Roof Deck Use, the Exclusive Terrace use or the Exclusive Patio Use even though not expressly mentioned or described therein. Unit Owners may exchange, subject to the prior written consent of the holder of a first mortgage upon the Unit of Ownership, (upon recording of an amendment to this Declaration in accordance with the Act) or lease between themselves any Exclusive Storage Use to a specific Storage Space appurtenant to their own Unit Ownership or any Exclusive Parking Use to specific Parking Space appurtenant to their own Unit Ownership. Except as hereinafter provided, no person not having an interest in the Unit Ownership shall have any interest in and to a Storage Space, Parking Space, Deck, Terrace, Patio or Roof Deck for any purpose unless permission in writing is given by the Board. All Exclusive Storage Uses, Exclusive Parking Uses, Exclusive Deck Uses, Exclusive Terrace Uses, Exclusive Patio Uses and Exclusive Roof Deck Uses and access to and use of the same shall be subject to such reasonable rules and regulations as may be established by the Board.

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 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

UNOFFICIAL COPY

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.

(A) Notwithstanding anything herein concerning insurance to the contrary in Section 1(B), (2), (3), (4), (5), and (6), the following shall control:

(i) **Property Insurance.** No policy of insurance shall be issued or delivered to the Association, and no policy of insurance issued to the Association shall be renewed, unless the insurance coverage under the policy includes property insurance (i) on the Common Elements and the Units, including the Limited Common Elements and except as otherwise determined by the Board, the bare walls, floors, and ceilings of the 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 of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. The insurance maintained under this subsection must include the Units, the Limited Common Elements except as otherwise determined by the Board, and the Common Elements. The insurance need not cover improvements and betterments to the Units installed by Unit Owners, but if improvements and betterments are covered, any increased cost may be assessed by the Association against the Units affected. 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.

UNOFFICIAL COPY

(ii) **General Liability Insurance.** No policy of insurance shall be issued or delivered to the Association, and no policy of insurance issued to the Association shall be renewed, unless the insurance coverage under the policy includes 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 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.

(iii) **Property and general liability insurance policies required to be carried by the Association** must include each of the following provisions:

(a) 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.

(b) 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.

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

(iv) **Adjustment of Losses; Distribution of Proceeds.** Any loss covered by the property policy required to be maintained by the Association 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 completely repaired or restored or the Association has been terminated as trustee.

(v) **Primary Insurance.** If at the time of a loss under the Association's 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.

(vi) **Deductibles.** The Board 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

UNOFFICIAL COPY

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.

(vii) **Directors and Officers Coverage.** The Board must obtain directors and officers liability coverage at a level deemed reasonable by the Board, if not otherwise established by this 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 this Declaration and By-Laws of the Association.

(viii) **Mandatory Unit Owner Coverage.** The Board may require condominium Unit Owners to obtain insurance covering their personal liability and compensatory (but not consequential) damages to another Unit caused by the negligence of the Owner or his or her guests, residents, or invitees, or regardless of any negligence originating from the Unit. The personal liability of a Unit Owner or Association member must include the deductible of the Owner whose Unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings. If the Unit Owner does not purchase or produce evidence of insurance requested by the Board, the directors may purchase the insurance coverage and charge the premium cost back to the Unit Owner. In no event is the Board liable to any person either with regard to its decision not to purchase the insurance, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained.

(B) **Fire and Hazard Insurance.** The Board of Managers shall acquire as a Common Expense, a policy or policies of insurance insuring the Common Elements and the Units against loss or damage from fire, lightning and other hazards contained in the customary fire and extended coverage, vandalism, and malicious mischief endorsements for the full insurable replacement value of the Common Elements and the Units written in the name of and to require a provision in such policy that the proceeds thereof shall be payable to the members of the Board, as trustees for each of the Unit Owners, in the percentages established in Exhibit "A".

The full insurable replacement cost of the Unit shall include the replacement cost value of additions, betterments, alterations and improvements made in and to any Unit, provided, however, the Board shall not be responsible for obtaining insurance on such additions, betterments, alterations or improvements unless and until such Owner shall make such report and request the Board in writing to obtain such insurance, and shall make arrangements satisfactory to the Board to reimburse the Board for such additional premiums, which additional premiums are deemed a Common Expense and upon the failure of such Owner so to do, the Board shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, betterments, alterations or improvements.

All said policies of insurance (1) shall contain standard mortgage clause endorsements in favor of the mortgagee or mortgagees of each Unit, if any, as their respective interest may

UNOFFICIAL COPY

appear, (2) shall provide that the insurance, as to the interest of the Board, shall not be invalidated by any act or neglect of any Unit Owner, (3) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercisable in the event the Unit Owners elect to sell the Property or remove the Property from the provisions of the Act, (4) shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days' prior written notice to the mortgagee of each Unit, (5) shall contain a clause or endorsement whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board, the managing agent, if any, their respective employees and agents, and the Unit Owners and occupants and (6) shall contain a "Replacement Cost Endorsement." The proceeds of such insurance shall be applied by the Board or by the corporate trustee or agent on behalf of the Board for the reconstruction of the building or shall be otherwise disposed of, in accordance with the provisions of the Declaration and the Act; and the rights of the mortgagee of any Unit under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions of the Act with respect to the application of insurance proceeds to reconstruction of the building. The Board may engage the services of, and such insurance may be payable to a bank or trust company authorized to do, execute, and accept trusts in Illinois to act as insurance trustee, or as agent or depository as an alternative to acting as trustee, and to receive and disburse the insurance proceeds resulting from any loss upon such terms as the Board shall determine consistent with the provisions of the Declaration. The fees of such bank or trust company shall be Common Expenses.

In the event of any loss in excess of \$20,000.00 in the aggregate, at the Board's discretion or request of any Unit Owner, the Board shall solicit bids from reputable contractors. Payment by an insurance company to the Board or to such corporate trustee or agent of the proceeds of any policy, and the receipt of release from the Board or such corporate trustee or agent of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust or agency agreement under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or see to the application of any payments of the proceeds of any policy by the Board or the corporate trustee.

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 may be included in the full replacement insurable cost for insurance purposes. Any increase premium charge therefore shall be assessed to that Unit Owner under the provisions of Section 9 of the Act. 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 twelve month period) by the Board. The Board shall in its discretion have the authority to obtain an appraisal by a reputable appraisal company as selected by the Board. The cost of such appraisal shall be Common Expenses.

UNOFFICIAL COPY

3. **Public Liability and Property Damage Insurance.** The Board of Managers shall acquire, as a Common Expense, and shall have the authority and duty to obtain, comprehensive public liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Property in amounts deemed sufficient in the judgment of the Board of Managers, insuring the Board of Managers, the Unit Owners' Association, the management agent, and their respective employees, agents, and all persons acting as agents. Insurance on the Property shall apply to all loss or damage from explosion to boilers, heating apparatus and such other property as the Board shall deem desirable. The Unit Owners shall be included as additional insureds but only with respect to that portion of the premises not reserved for their exclusive use. The insurance shall cover claims of one or more insured parties against other insured parties. The insurance shall contain a waiver of any rights to subrogation by the insuring company against any of the above-named insured persons.

4. **Worker's Compensation and Other Insurance.** The Board of Managers shall acquire, as a Common Expense, worker'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.

5. **Waiver.** Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, the Association, its officers, members of the Board, the Declarant, the managing agent of the buildings, 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.

6. **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 Developer and Board of Directors have caused or may cause to be incorporated under the laws of the State of Illinois, a not-for-profit corporation (herein referred to as "the Association") under the name of "1340 STATE PARKWAY 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 provided in this Declaration. the administration of the Property shall be bested in the Board of Managers of the Association consisting of the number of Persons, and who shall be elected in the manner, provided in the By-Laws contained herein, as Articles XVI, XVII and XVIII. The Board of Directors of the Association shall be deemed to be the Board of Managers

UNOFFICIAL COPY

referred to herein and in the Act. Each Unit Owner shall be a member of the Association so long as he or she shall be a Unit Owner.

2. **Duties and Powers of the Association.** The 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, the Act and this Declaration; provided, however, that (i) the terms and provisions of the Act shall control in the event of an inconsistency between the Act, on the one hand, and this Declaration, the Articles of Incorporation, and the By-Laws on the other hand, and (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. **Actions of the Board and Indemnity.** The members of the Board and the officers thereof or of 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, the Board or the Association, but only for acts or omissions finally adjudged by a court of competent jurisdiction to constitute fraud, bad faith or gross negligence. Each agreement made by the Association, the Board or its members or officers 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. The Association will indemnify the Board and its officers and members for any loss, liability or damage incurred by it on behalf of the Association in or in furtherance of the Association's interests, except for any loss, liability or damage arising out of acts or omissions finally adjudged by a court of competent jurisdiction to constitute fraud, bad faith, gross negligence or other breach of fiduciary duty. The liability of any Unit Owner arising out of any contract made by the Association, the Board or its members or officers, or out of the aforesaid indemnity, shall be limited to an amount equal to the total liability thereunder multiplied by such Unit Owner's percentage ownership interest in the Common Elements.

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 this Declaration or By-Laws, the determination thereof by the Board shall be final and binding on each and all of such Unit Owners.

5. **Records of the Association - Availability for Examination.** The manager or Board of Managers shall maintain the following records of the Association available for examination and copying at convenient hours of weekdays by the Unit Owners or their mortgagees and their duly authorized agents or attorneys.

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

(b) Detailed accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and

UNOFFICIAL COPY

repair expenses of the Common Elements and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by Association shall be maintained.

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

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

(e) Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to Section 25 of the General Not-For-Profit Corporation Act of 1986 as amended, shall be maintained.

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

ARTICLE VIII MAINTENANCE, ALTERATIONS, DECORATING

1. Maintenance, Repairs and Replacements. 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.

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

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 buildings, 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 responsible 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.

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 of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs

UNOFFICIAL COPY

or replacements shall be required which would otherwise be at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs, and replacements as may be determined by the Board, to the extent not covered by insurance.

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.

Roof repairs, however, are the responsibility of the Association, provided however, the Unit Owner with a deck on the roof, if any, shall have the sole responsibility of removing any decking or other obstruction such Unit Owner places on the roof needed to be removed to repair the roof.

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 buildings or which would structurally change the buildings.

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, wallpapering, 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 Unit caused by maintenance, repair or replacement work on the Common Elements by the Board, shall be furnished as part of the Common Expenses.

ARTICLE IX SALE, LEASING OR OTHER ALIENATION

1. **Sale or Lease.** Any Unit Owner other than the Developer who wishes to sell his Unit Ownership shall give to the Board not less than thirty (30) days prior written notice of his intent to sell and subsequently, the terms of any contract to sell, 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 and such other information

UNOFFICIAL COPY

concerning the proposed purchaser 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 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 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 of such Unit Ownership to the proposed purchaser named in such notice upon the terms specified therein. If the Unit Owner fails to close said proposed sale within said ninety (90) days, the Unit Ownership shall again become subject to the Board's right of first refusal as herein provided.

Notwithstanding any foregoing provisions of this Declaration to the contrary, rental, leasing, subleasing or other tenancy arrangement of Units by a Unit Owner is prohibited.

(i) Any Unit being leased out in violation of this provision or any Unit Owner found to be in violation of the Rules and Regulations adopted by the Board of Directors may be subject to a flat or daily fine to be determined by the Board of Directors upon notice and an opportunity to be heard.

(ii) In addition to the authority to levy fines against the Unit Owner for violation of this Amendment or any other provision of the Declaration, By-Laws or Rules and Regulations, the Board shall have all rights and remedies, including but not limited to the right to maintain an action for possession against the Unit Owner and/or their tenant under 735 ILLS 5/9-111, an action for injunctive and other equitable relief, or an action at law for damages.

(iii) Any action brought on behalf of the Association and/or the Board of Directors to enforce this provision shall subject the Unit Owner to the payment of all costs and attorneys' fees at the time they are incurred by the Association.

(iv) All unpaid charges a result of the foregoing shall be deemed to be a lien against the Unit and collectible as any other unpaid regular or special assessment, including late fees and interest on the unpaid balance.

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

UNOFFICIAL COPY

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 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 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, who 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, 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 at which it was sold at said sale. If said option is not exercised by the Board within said thirty (30) days after receipt of such notice, it shall thereupon expire

UNOFFICIAL COPY

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 XVI 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 Unit 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 a 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. Any of the options contained in this Article IX may be released or waived by the Board 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. 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 lease shall be deposited in the

UNOFFICIAL COPY

maintenance fund and credited to each Unit Owner in the same proportion in which the Board could levy a special assessment.

10. **Exceptions to Board's Right of 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 a mortgagee who acquires title via a deed in lieu of foreclosure, or 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 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 Owners 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 rights and option 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 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.

ARTICLE X

DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDINGS

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 shall not be undertaken. In the event such repair, restoration, or reconstruction

UNOFFICIAL COPY

is not undertaken, the net proceeds of insurance policies shall be divided by the Board or the payees 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 "A", after first paying out of the share of each Unit Owner the amount of any unpaid liens of his Unit, in the order of the priority of such liens.

2. **Insufficient Insurance.** (a) If the insurance proceeds are insufficient to reconstruct the buildings 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 Units in a percentage equal to the percentage of undivided interest owned by each owner in the Property, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Unit Owner.

(b) In the case of damage or other destruction in which fewer than one-half (1/2) of the Units are rendered habitable, 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 ten (10) days following the final adjustment of insurance claims, if any. Otherwise, such meeting shall be held within thirty (30) 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 reconstructions, 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

UNOFFICIAL COPY

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 Unit's percentage interest. Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Any proceeds available from the withdrawal of any Limited Common Elements will be distributed in accordance with the interest of those entitled to their use.

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

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 seventy-five (75%) percent 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 the Declaration. Such action shall be binding upon all Unit Owners, and it

UNOFFICIAL COPY

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 assessments 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.

ARTICLE XIII BY-LAWS

The provisions of Articles XIV, XV, XVI, XVII, and XVIII shall constitute (the "By-laws") of the Association and the By laws prescribed by the Act.

ARTICLE XIV BOARD OF MANAGERS

1. Board of Managers (Board of Directors). (a) The direction and administration of the Property shall be vested in a Board of Managers, consisting of three (3) persons who shall be appointed or elected in the manner herein provided. Each member of the Board shall be one of the Unit Owners and shall reside on the Property, 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 officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust or manager of such other legal entity, shall be eligible to serve as a member of the Board, provided such person must reside on the Property. If there are multiple Owners of a single Unit, only one of the multiple Owners shall be eligible to serve as a member of the Board at any one time.

(b) In all elections for members of the Board, each voting member shall be entitled to cumulate his votes in the manner provided by law and the candidate receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Members shall serve for a one (1) year term, provided, however, that a Board member or officer may be re-elected at the expiration of his term. Members of the Board shall receive no compensation for their services unless expressly authorized by the Board with the approval of voting members having three-fourths (3/4) of the total votes. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by the voting members called for such purpose. The remaining members of the Board shall have the authority to fill the vacancy by two-thirds (2/3) vote until the next meeting of Unit Owners or for a period terminating no later than thirty (30) days following the filing of a petition signed by Unit Owners holding 20% of

UNOFFICIAL COPY

the votes of the Association requesting a meeting of the Unit Owners to fill the vacancy for the balance of the term. A meeting of the Unit Owners shall be called for purposes of filling a vacancy on the Board no later than thirty (30) days following the filing of a petition signed by Unit Owners holding 20% of the votes of the Association requesting such a meeting. Except as otherwise provided in this Declaration, the Property shall be managed by the Board and the Board shall act by majority vote of those present at its meeting when a quorum exists. A majority of the total number of the members of the Board shall constitute a quorum. Meetings of the Board may be called, held, and conducted in accordance with such resolutions as the Board may adopt.

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

(d) Any Board member may be removed from office 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. The remaining members of the Board may fill a vacancy on the Board by a two-thirds (2/3) vote until the next annual meeting of Unit Owners or for a period terminating no later than thirty (30) days following the filing of a petition signed by Unit Owners holding twenty percent (20%) of the votes of the Association requesting a meeting of the Unit Owners to fill the vacancy for the balance of the term. A meeting of the Unit Owners shall be called for the purpose of filling a vacancy on the Board no later than thirty (30) days following the filing of a petition signed by Unit Owners holding twenty percent (20%) of the votes of the Association requesting such a meeting.

(e) Meetings of the Board of Managers shall be open to any Unit Owner, except for the portion of any meeting held (i) to discuss litigation when an action against or on behalf of the particular Association has been filed and is pending in a court or administrative tribunal, or when the Board of Managers 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; that any vote on these matters shall be taken at a meeting or portion thereof open to any Unit Owner; that any Unit Owner may record the proceedings at meetings required to be open by this Act by tape, film, or other means; that the Board may prescribe reasonable rules and regulations to govern the right to make such recordings; that notice of such meetings shall be mailed or delivered, at least 48 hours prior thereof, unless a written waiver of such notice is

UNOFFICIAL COPY

signed by the person or persons entitled to such notice pursuant to the Declaration, By-laws, other Condominium Instrument, or provision of law other than this subsection before the meeting is convened; and that copies of notices of meetings of the Board of Managers shall be posted in entranceways, elevators, or other conspicuous places in the condominium at least 48 hours prior to the meeting of the Board of Managers. The Board shall meet at least four (4) times annually. Special meetings of the Board of Managers can be called by the President or twenty-five percent (25%) of the members of the Board.

(f) **Election Procedures.** The Board of Managers may disseminate to the Unit Owners biographical and background information about candidates for election to the Board if reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated; and the Board does not express a preference in favor of any candidate.

Any proxy distributed for Board elections by the Board of Managers must give Unit Owners the opportunity to designate any person as the proxy holder and give the Unit Owner the opportunity to express a preference for any of the known candidates for the Board or to write in a name.

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

(h) **Mail-In Ballot Election.** Except as provided in subparagraph (i) in connection with Board elections, a Unit Owner may vote by proxy executed in writing by the Unit Owner or by his duly authorized attorney in fact. The proxy must bear the date of execution and, unless the condominium instruments or the written proxy itself provide otherwise, the proxy is invalid after 11 months from the date of its execution;

(i) If a rule adopted at least 120 days before a Board election or the Declaration or By-Laws provide for balloting as set forth in this subsection, Unit Owners may not vote by proxy in Board elections, but may vote only (i) by submitting an Association-issued ballot in person at the election meeting or (ii) by submitting an Association-issued ballot to the Association or its designated agent by mail or other means of delivery specified in the Declaration, By-Laws, or rule. The ballots shall be mailed or otherwise distributed to Unit Owners not less than 10 and not more than 30 days before the election meeting, and the Board shall give Unit Owners not less than 21 days' prior written notice of the deadline for inclusion of a candidate's name on the ballots. The deadline shall be no more than 7 days before the ballots are mailed or otherwise distributed to Unit Owners.

UNOFFICIAL COPY

Every such ballot must include the names of all candidates who have given the Board or its authorized agent timely written notice of their candidacy and must give the person casting the ballot the opportunity to cast votes for candidates whose names do not appear on the ballot. A ballot received by the Association or its designated agent after the close of voting shall not be counted. A Unit Owner who submits a ballot by mail or other means of delivery specified in the Declaration, By-Laws, or rule may request and cast a ballot in person at the election meeting, and thereby void any ballot previously submitted by that Unit Owner.

(ii) If a written petition by Unit Owners with at least twenty percent (20%) of the votes of the Association is delivered to the Board within 14 days after the Board's approval of a rule adopted pursuant to subparagraph (i), the Board shall call a meeting of the Unit Owners within 30 days after the date of delivery of the petition. Unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the rule, the rule is ratified.

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

(a) To provide for the operation, care, upkeep, maintenance, replacement and improvement of the Common Elements. Nothing in this subsection (a) shall be deemed to invalidate any provision in the Declaration or By-Laws placing limits on expenditures for the Common Elements, provided, that such limits shall not be applicable to expenditures for repair, replacement, or restoration of existing portions of the Common Elements. The terms "repair, replacement or restoration" means expenditures to deteriorated or damaged portions of the Property related to the existing decorating, facilities, or structural or mechanical components, interior or exterior surfaces, or energy systems and equipment, with the functional equivalent of the original portions of such areas. Replacement of the Common Elements may result in an improvement over the original quality of such elements or facilities; provided that, unless the improvement is mandated by law or is an emergency as defined in Section 18(a)(8)(iv) of the Act, if the improvement results in a proposed expenditure exceeding five percent (5%) of the annual budget, the Board of Managers, upon written petition by Unit Owners with 20 percent (20%) of the votes of the Association delivered to the Board within fourteen (14) days of the Board action to approve the expenditure, shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition to consider the expenditure; unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the expenditure, it is ratified.

(b) Preparation, adoption, and distribution of the annual budget for the Property.

(c) Levying of assessments.

(d) Collection of assessments of 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) To adopt and amend rules and regulations covering the details of the operation and use of the Property, after a meeting of the Unit Owners called for the specific purpose of discussing the proposed rules and regulations. Notice of the meeting shall contain the full text of the proposed rules and regulations, and the meeting shall conform to the requirements of Section 18(b) of the Condominium Property Act, except that no quorum is required at such meeting of the Unit Owners. However, no rule or regulation may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution, including, but not limited to, the free exercise of religion, nor may any rules or regulations conflict with the provisions of the Condominium Property Act or the Condominium Instruments. No rule or regulation shall prohibit any reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front-door area of a condominium Unit;
- (i) Keeping of detailed, accurate records of the receipts and 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) Pay real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the real property of the condominium.
- (l) Impose charges for late payments of a Unit Owner's proportionate share of the Common Expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of the Declaration, By-laws, and rules and regulations of the Association.
- (m) Unless the Condominium Instruments expressly provide to the contrary, assign its right to future income, including the right to receive Common Expenses.

UNOFFICIAL COPY

(n) Record the dedication of a portion of the Common Elements to a public body for use as, or in connection with, a street or utility where authorized by the Unit Owners under the provisions of the Act.

(o) Record the granting of an easement for the laying of cable television cable where authorized by the Unit Owners under the provisions of the Act and permit continued use of television cables presently connected to the Building subject to rules and regulations of the Association.

(p) 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 as 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.

(q) To pay for any 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 or 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.

(r) 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.

(s) 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 that 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.

(t) The Board or its agent, upon reasonable notice, may enter any Unit when necessary in connection with and 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.

UNOFFICIAL COPY

(u) The Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board.

(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, or by a two-thirds (2/3) vote of the members of the Board of Managers, 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) The Board of Managers may not enter into a contract with a current Board member or with a corporation or partnership in which a Board member or a member of the Board member's immediate family has twenty-five percent (25%) or more interest, unless notice of intent to enter the contract is given to Unit Owners within twenty (20) days after a decision is made to enter into the contract and the Unit Owners are afforded an opportunity by filing a petition, signed by twenty percent (20%) of the Unit Owners, for an election to approve or disapprove the contract. Such petition shall be filed within twenty (20) days after such notice and such election shall be held within thirty (30) days after filing the petition. For purposes of this provision, a Board member's immediate family means the Board member's spouse, parent, and children.

(x) To pay for water, waste removal, other operating expenses, electricity, telephone, and other necessary utility service for the Common Elements.

(y) All agreements, contracts, deeds, leases, vouchers for payment of expenditures, and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by 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.

(z) The Board's powers, hereinabove enumerated and described in the Declaration, shall be limited in that the Board shall have no authority to acquire and pay for any structural alterations, additions to, or improvements of the Common Elements (other than for purposes of replacing or restoring portions of the Common Elements, subject to all the provisions of this Declaration) requiring an expenditure in excess of ten thousand dollars (\$10,000), without, in each case, the prior approval of voting members having two-thirds (2/3) of the total votes.

(aa) Nothing hereinabove contained in this Article 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.

UNOFFICIAL COPY

(bb) To seek relief on behalf of all Unit Owners when authorized pursuant to Subsection (c) of Section 10 of the Condominium Property Act from or in connection with the assessment or levying of real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof or of any lawful taxing or assessing body;

(cc) To reasonably accommodate the needs of a handicapped Unit Owner as required by the federal Civil Rights Act of 1968, the Human Rights Act and any applicable local ordinances, in the exercise of its powers with respect to the use of Common Elements or approval of modifications in an individual Unit.

(dd) To accept service of a notice of claim for purposes of the Mechanics Lien Act on behalf of each respective member of the Association with respect to improvements performed pursuant to any contract entered into by the Board or any contract entered into prior to the recording of the Declaration pursuant to the Act, and to distribute the notice to the Unit Owners within 7 days of the acceptance of the service by the Board. The service shall be effective as if each individual Unit Owner had been served individually with notice.

(ee) The Association shall 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. All management companies that are responsible for the funds held or administered by the Association must be covered by a fidelity bond for the maximum amount of coverage available to protect those funds. The Association has standing to make a loss claim against the bond of the managing agent as a party covered under the bond. The fidelity bond must be in the full amount of Association funds and reserves in the custody of the Association or the management company.

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 member shall be the Unit Owner or one (designated by majority agreement) of the group composed of all the Unit Owners of a Unit Ownership. There is majority agreement if any one of the multiple Owners cast the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit. Such voting member 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. A proxy shall be invalid after 11 months from the date of its execution, unless otherwise provided in the proxy, and every proxy must bear the date of execution. Any or all Unit Owners of a Unit Ownership,

UNOFFICIAL COPY

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, provided, however, if only one of the multiple Owners of a Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit. The total number of votes of all voting members shall be 100, and each Unit Owner or group of Unit Owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Elements applicable to his or her Unit Ownership as set forth in Exhibit "A". 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. Voting shall be on a percentage basis. The percentage vote to which each Unit is entitled is the percentage interest of the undivided ownership of the Common Elements appurtenant thereto.

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 a majority of the voting members and voting members having at least a majority 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 a meeting.

(b) There shall be an annual meeting of the voting members each year within 15 days of the anniversary of the first meeting 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.

(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, authorized by the President of the Board, a majority of the Board, or by the voting members having 20% of the total votes and delivered not less than ten (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 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 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. Written notice of any membership meeting shall be mailed or delivered giving Unit Owners no less than ten (10) and no more than thirty (30) days notice of the time, place, and purpose of such meeting.

UNOFFICIAL COPY

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; or the purchase or sale of land or of Units on behalf of all Unit Owners shall be effected unless there is an affirmative vote of three-fourths (3/4) of the votes of Unit Owners, at a meeting duly called for that purpose.

5. Miscellaneous. (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 Property Act or in the Condominium Instruments shall require the specified percentage by number of Units rather than by percentage of interest in the Common Elements allocated to Units that would otherwise be applicable and Garage Units or Storage Units, or both, shall have, in total, no more votes than their aggregate percentage of ownership in the Common Elements; this shall mean that if Garage Units or Storage Units, or both, are to be given a vote, or portion of a vote, that the Association must add the total number of votes cast of Garage Units, Storage Units, or both, and divide that total by the number of Garage Units, Storage Units, or both, and multiply by the aggregate percentage of ownership of Garage Units and Storage Units to determine the vote, or portion of a vote, that Garage Units or Storage Units or both, have. For purposes of this subsection, when making a determination of whether 30% or fewer of the Units, by number, possess over 50% in the aggregate of the votes in the Association, a Unit shall not include a Garage Unit or a Storage Unit.

ARTICLE XVI ASSESSMENTS - MAINTENANCE FUND

1. Estimated Annual Budget and Assessments. (a) 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 "A" 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 March 1 of each calendar year following the year in

UNOFFICIAL COPY

which the initial meeting is held, the Board shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding year actually incurred 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 applied to and transferred to the reserve, or in the alternative credited according to each Unit Owner's percentage of ownership in the Common Elements to the next monthly installments due from Unit Owners under the current year 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.

(b) If an adopted budget requires assessment against the Unit Owners in any fiscal or calendar year exceeding one hundred fifteen percent (115%) of the assessments for the preceding year, the Board of Managers, upon written petition by Unit Owners with twenty percent (20%) of the votes of the Association filed within fourteen (14) days of the Board action, shall call a meeting of the Unit Owners within thirty (30) days of the date of filing of the petition to consider the budget. Unless a majority of the votes of the Unit Owners are cast at the meeting to reject the budget, it is ratified, whether or not a quorum is present. In determining whether assessments exceed one hundred fifteen percent (115%) of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the condominium property, and anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, shall be excluded from the computation.

2. Reserves and Adjustments. The Board shall establish and maintain a reasonable reserve for contingencies and replacements. Any extraordinary or nonrecurring Common Expenses, any Common Expense not set forth in the budget as adopted, and any increase in assessments over the amount adopted shall be separately assessed against all Unit Owners.

(a) Each Unit Owner shall receive notice, in the same manner as provided for in the Condominium Property Act for membership meetings, of any meeting of the Board of Managers concerning the adoption of a separate (special) assessment.

(b) Except as provided in subsection (c) below, if an adopted separate assessment by the Board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding one hundred fifteen percent (115%) of the sum of all regular and separate assessments payable during the preceding fiscal year, the Board of Managers, upon written petition by Unit Owners with twenty percent (20%) of the votes of the Association delivered to the Board within fourteen (14) days of the Board action, shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition to consider the separate assessment. Unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the separate assessment, it is ratified.

(c) Separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board of Managers without being subject to

UNOFFICIAL COPY

Unit Owner approval or the provisions of item (b) above or item (d) below. As used herein, "emergency" means an immediate danger to the structural integrity of the Common Elements or to the life, health, safety or property of the Unit Owners.

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

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

3. 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 less than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

4. 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 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 this account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

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

UNOFFICIAL COPY

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 shall be used as a residence for a single family or such other uses permitted by this Declaration and for no other purpose. That part of the Common Elements separating any two or more adjoining 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. **Construction 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 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.

UNOFFICIAL COPY

7. Floor Covering. In order to enhance the soundproof of the building, the floor covering for all occupied Units shall meet a certain minimum standard as may be specified by rules and regulations of the Board.

8. Pets, etc. No animals, reptiles, rabbits, livestock, fowl, or poultry of any kind shall be raised, bred, or kept in any Unit or the Common Elements, except that dogs, cats, or other household pets may be kept in Units, 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 ten (10) days' written notice from the Board.

9. 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.

10. Unsightliness. 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.

11. 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 designated for that purpose. No access to or storage of personal property shall be permitted in the boiler room in accordance with the rules and regulations of the Board.

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

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

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

15. 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 Sections 1 and 12 of this Article XVII.

16. Flags. Notwithstanding any provision in the Declaration, By-Laws, rules, regulations, or agreements or other instruments of the Association or the Board's construction of any of those instruments, the Board may not prohibit the display of the American flag or a

UNOFFICIAL COPY

military flag, or both, on or within the facilities of a Unit Owner or on the immediately adjacent exterior of the building in which the Unit of a Unit Owner is located. The Board may adopt reasonable rules and regulations, consistent with Sections 4 through 10 of Chapter 1 of Title 4 of the United States Code, regarding the placement and manner of display of the American flag and the Board may adopt reasonable rules and regulations regarding the placement and manner of display of a military flag. The Board may not prohibit the installation of a flagpole for the display of the American flag or a military flag, or both, on or within the facilities of a Unit Owner or on the immediately adjacent exterior of the building in which the Unit of a Unit Owner is located, but the Board may adopt reasonable rules and regulations regarding the location and size of flagpoles. As used herein, "American flag" means the flag of the United States (as defined in Section 1 of Chapter 1 of Title 4 of the United States Code and the Executive Orders entered in connection with that Section) made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but "American flag" does not include a depiction or emblem of the American flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component. "Military flag" means 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, but "military flag" does not include a depiction or emblem of a military flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

ARTICLE XVIII REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS

1. **Abatement and Enjoyment.** The violation of any restriction, or condition or regulation adopted by the Board, or the breach of any covenant or provision herein contained, shall give the Board the right, in addition to the rights set forth in the next succeeding section: (a) to enter upon that part of the 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, and 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 shall be added to and deemed part of his respective share of the Common Expenses, and the Board shall have a lien for all of the same upon the Unit Ownership of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon all his personal property in his Unit or located elsewhere on the Property. Any and all of such rights and remedies may be exercised at 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

UNOFFICIAL COPY

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 Owner or to continue as a Unit Owner and to continue to occupy, use, or control his Unit and thereupon an action in equity may be filed by the members of the Board against the defaulting Unit Owner for a decree of mandatory injunction against the Unit Owner or occupant or, in the alternative, for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use, or control the Unit owned by him on account of the 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 from re-acquiring this interest in the Property at such judicial sale. The proceeds of any such 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 thereof 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.

ARTICLE XIX GENERAL PROVISIONS

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

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 1340 North State Parkway, Chicago, Illinois 60610 (indicating thereon the number of the respective Unit) 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 acknowledgment of the receipt thereof, or if addressed to a Unit Owner, when deposited in his mailbox in the building or at the door of his Unit in the building.

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.

UNOFFICIAL COPY

4. **Binding Effect.** Each grantee of the Developer, 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 barges, and the jurisdiction, rights, and powers created or reserved by this Declaration, and all rights, benefits, and privileges of very 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.

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 reaches which may have occurred.

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 of Unit Owners as 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 bona fide 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 rights created by this Declaration would otherwise be unlawful or void violations of (a) the rule against perpetuities or some analogous statutory provision, (b) the rules restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last to die of the now living lawful descendants of Barack H. Obama, President of the United States, and Mark Kirk, 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

UNOFFICIAL COPY

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

The Owner of such 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 hereinafter set forth. Each Unit Owner's liability for any judgment entered against the Board of Managers or the Association, if any, shall be limited to his proportionate share of the indebtedness as set forth herein, whether collection is sought through assessment or otherwise. A Unit Owner shall be liable for any claim, damage, or judgment entered as a result of the use or operation of his Unit, or caused by his own conduct.

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, Occupant, the Association, its officers, members of the Board, 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 casualty, to the extent that such damage is covered 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 a 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. **Word Construction.** Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as context may require.

14. **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 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 titleholding 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

UNOFFICIAL COPY

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.

15. **Installment Contract.** In the event of a resale of a Unit, the purchaser of a Unit from a seller pursuant to an installment contract to purchase shall during such times as he or she resides in the Unit be counted toward a quorum for purposes of election of members of the Board of Managers at any meeting of the Unit Owners called for purposes of electing members of the Board, shall have the right to vote for the election of members of the Board of Managers and to be elected to and serve on the Board of Managers unless the seller expressly retains in writing any or all such rights. In no event may the seller and purchaser both be counted toward a quorum, be permitted to vote for a particular office or be elected and serve on the Board. Satisfactory evidence of an installment contract shall be made available to the Association or its agent. For purposes of this section "installment contract" shall have the same meaning as set forth in Section 1(e) of "An Act Relating to Installment Contracts to Sell Dwelling Structures", approved August 11, 1987 as amended (765 ILCS 75/1).

16. **Transfer.** A Unit Owner may not assign, delegate, transfer, surrender, or avoid the duties, responsibilities, and liabilities of a Unit Owner under the Act, the condominium instruments, or rules and regulations of the Association; and such an attempted assignment, delegation, transfer, surrender, or avoidance shall be deemed void.

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

We, the undersigned, constitute at least two-thirds (2/3) of the members of the Board of Managers of the 1340 North State Parkway Condominium Association established by the aforesaid Declaration of Condominium Ownership. By our signatures below, we hereby approve of and consent to this Amended and Restated Declaration to the Declaration pursuant to Section 27(b)(1) of the Illinois Condominium Property Act. In witness, whereof we have cast our votes and signed this document in favor of this Amended and Restated Declaration at a duly called meeting of the Board of Managers of 1340 North State Parkway Condominium Association held on 9-20, 2014.

David Louis Jones
 Treasurer

Marlene Jytken President

Board of Directors of 1340 North State Parkway
 Condominium Association

ATTEST:

Ruel B. Lynn MD
 Secretary

UNOFFICIAL COPY

AFFIDAVIT OF SECRETARY

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, RICHARD B. LAZAR being first duly sworn on oath, depose and state that I am the Secretary of the Board of Managers of 1340 North State Parkway Condominium Association and as such Secretary and keeper of the books and records of said condominium. I further state that the foregoing Amended and Restated Declaration was approved by at least two-thirds (2/3) of the members of the Board of Managers of said condominium, at a meeting of the Board of Managers duly noticed and convened and held for that purpose on SEPTEMBER 20, 2011, at which a quorum was present throughout, and such approval has not been altered, modified, or rescinded in any manner but remains in full force and effect, and that a copy of the foregoing Amended and Restated Declaration either was delivered personally to each Unit Owner at the Association or was sent by regular mail, to each Unit Owner in the Association at the address of the Unit or such other address as the Owner has provided to the Board of Managers for purposes of mailing notices. I further state the Unit Owners did not file a petition with the Board, pursuant to the requirements of Section 27(b)(3) of the Illinois Condominium Property Act, objecting to the adoption of this Amended and Restated Declaration.

Richard B. Lazar MD
 Secretary of the 1340 North State Parkway
 Condominium Association

SUBSCRIBED AND SWORN to before me
 this 20th day of September, 2011.

[Signature]
 Notary Public



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

PARCEL A: UNIT NUMBER 1N, 1S, 2, 3N, 3S, 4N, AND 4S IN 1340 N STATE PARKWAY CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

PARCEL 1: SOUTH 27 FEET OF LOT 2 AND ALL OF LOTS 3 AND 4 IN ASSESSOR'S DIVISION, OF LOT 8 IN BRONSON'S ADDITION TO CHICAGO ALSO THAT PART OF THE NORTH 25 FEET OF LOT 7 IN BRONSON'S ADDITION TO CHICAGO LYING EAST OF THE EAST LINE OF THE SOUTHERLY EXTENSION OF LOT 5 IN ASSESSOR'S DIVISION OF LOT 8 IN BRONSON'S ADDITION AFORESAID; PART OF THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN.

PARCEL 2: EASEMENTS FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS AND THE RIGHT TO MAINTAIN THEREON THE EXISTING FENCE, INCLUDING GATEWAYS BORDERING THE FOLLOWING DESCRIBED LAND: THE SOUTH 23 FEET LYING WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 5 IN ASSESSOR'S DIVISION OF LOT 8 OF BRONSON'S ADDITION TO CHICAGO EXCEPTING FROM THE ABOVE DESCRIBED PROPERTY THAT PART DEDICATED BY DOCUMENT NUMBER 132784, AND THE NORTH 23 FEET OF THE PUBLIC ALLEY DEDICATED BY DOCUMENT 132784 (NOW VACATED) LYING NORTH OF THE SOUTH LINE OF THE NORTH 25.0 OF LOT 7 AS SET FORTH IN INSTRUMENTS RECORDED AS DOCUMENT 21266392 AND 21289644; WHICH SURVEY IS ATTACHED AS EXHIBIT "B" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 97552842, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN COOK COUNTY, ILLINOIS.

Unit	Parcel Number	Percentages of Ownership
1N	17-04-218-047-1001	8.53
1S	17-04-218-047-1002	11.45
2	17-04-218-047-1003	26.85
3N	17-04-218-047-1004	14.07
3S	17-04-218-047-1005	14.07
4N	17-04-218-047-1006	12.21
4S	17-04-218-047-1007	12.72
		100.00

UNOFFICIAL COPY

EXHIBIT

ATTACHED TO

Property of Cook County Clerk's Office

49 pgs
10 paper

59

\$ 288
Rusto



Doc#: 1224329080 Fee: \$288.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/30/2012 03:07 PM Pg: 1 of 59

7

DOCUMENT

SEE PLAT INDEX